



# FEDERAL REGISTER

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Washington, Tuesday, March 17, 1959

## Title 3—THE PRESIDENT

### Executive Order 10807

#### FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

WHEREAS science and technology are essential resources for the security and welfare of the United States; and

WHEREAS Federal programs in science and technology will advance our security, health, and economic welfare and the quality of education in the United States; and

WHEREAS closer cooperation among Federal agencies will facilitate the resolution of common problems in science and technology, promote a greater measure of coordination, and otherwise improve the planning and management of Federal programs in these fields:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

#### SECTION 1. Establishment of Council.

(a) There is hereby established the Federal Council for Science and Technology (hereinafter referred to as the Council).

(b) The Council shall be composed of the following-designated members: (1) the Special Assistant to the President for Science and Technology, (2) one representative of each of the following-named departments, who shall be designated by the Secretary of the Department concerned and shall be an official of the Department of policy rank: the Departments of Defense, the Interior, Agriculture, Commerce, and Health, Education, and Welfare, (3) the Director of the National Science Foundation, (4) the Administrator of the National Aeronautics and Space Administration, and (5) a representative of the Atomic Energy Commission, who shall be the Chairman of the Commission or another member of the Commission designated by the Chairman. A representative of the Secretary of State designated by the Secretary and a representative of the Director of the Bureau of the Budget designated by the Director may attend meetings of the Council as observers.

(c) The Chairman of the Council (hereinafter referred to as the Chair-

*This issue includes two parts bound together. Part II contains the Federal Procurement Regulations, Title 41, Chapter I, Code of Federal Regulations.*

man) shall be designated by the President from time to time from among the members thereof. The Chairman may make provision for another member of the Council, with the consent of such member, to act temporarily as Chairman.

(d) The Chairman (1) may request the head of any Federal agency not named in section 2(b) of this order to designate a representative to participate in meetings or parts of meetings of the Council concerned with matters of substantial interest to the agency, and (2) may invite other persons to attend meetings of the Council.

(e) The Council shall meet at the call of the Chairman.

SEC. 2. *Functions of Council.* (a) The Council shall consider problems and developments in the fields of science and technology and related activities affecting more than one Federal agency or concerning the over-all advancement of the Nation's science and technology, and shall recommend policies and other measures (1) to provide more effective planning and administration of Federal scientific and technological programs, (2) to identify research needs including areas of research requiring additional emphasis, (3) to achieve more effective utilization of the scientific and technological resources and facilities of Federal agencies, including the elimination of unnecessary duplication, and (4) to further international cooperation in science and technology. In developing such policies and measures the Council, after consulting, when considered appropriate by the Chairman, the National Academy of Sciences, the President's Science Advisory Committee, and other organizations, shall consider (i) the effects of Federal research and development policies and programs on non-Federal programs and institutions, (ii) long-range program plans designed to

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(As of January 1, 1959)

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- Titles 40-42 (\$0.35)
- Title 46, Part 150 to end (\$0.50)

Previously announced: Title 3, 1958 Supp. (\$0.35); Title 8 (\$0.35); Titles 22-23 (\$0.35); Title 25 (\$0.35); Title 38 (\$0.55); Title 46, Parts 146-149, 1958 Supp. 2 (\$1.50); Title 47, Part 30 to end (\$0.30); Title 49, Parts 91-164 (\$0.40)

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meet the scientific and technological needs of the Federal Government, including manpower and capital requirements, and (iii) the effects of non-Federal programs in science and technology upon Federal research and development policies and programs.

(b) The Council shall consider and recommend measures for the effective implementation of Federal policies concerning the administration and conduct of Federal programs in science and technology.

(c) The Council shall perform such other related duties as shall be assigned, consonant with law, by the President or by the Chairman.

(d) The Chairman shall, from time to time, submit to the President such of the Council's recommendations or reports as require the attention of the President by reason of their importance or character.

**Sec. 3. Agency assistance to Council.**

(a) For the purpose of effectuating this order, each Federal agency represented on the Council shall furnish necessary assistance to the Council in consonance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691). Such assistance may include (1) detailing employees to the Council to perform such functions, consistent with the purposes of this order, as the Chairman may assign to them, and (2) undertaking, upon request of the Chairman, such special

studies for the Council as come within the functions herein assigned to the Council.

(b) Upon request of the Chairman, the heads of Federal agencies shall, so far as practicable, provide the Council with information and reports relating to the scientific and technological activities of the respective agencies.

**Sec. 4. Standing committees and panels.** For the purpose of conducting studies and making reports as directed by the Chairman, standing committees and panels of the Council may be established in consonance with the provisions of section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691). At least one such standing committee shall be composed of scientist-administrators representing Federal agencies, shall provide a forum for consideration of common administrative policies and procedures relating to Federal research and development activities and for formulation of recommendations thereon, and shall perform such other related functions as may be assigned to it by the Chairman of the Council.

**Sec. 5. Security procedures.** The Chairman shall establish procedures to insure the security of classified information used by or in the custody of the Council or employees under its jurisdiction.

**Sec. 6. Other orders; construction of orders.** (a) Executive Order No. 9912 of December 24, 1947, entitled "Establishing the Interdepartmental Committee on Scientific Research and Development," is hereby revoked.

(b) Executive Order No. 10521 of March 17, 1954, entitled "Administration of Scientific Research by Agencies of the Federal Government," is hereby amended:

(1) By substituting for section 1 thereof the following:

"SECTION 1. The National Science Foundation (hereinafter referred to as the Foundation) shall from time to time recommend to the President policies for

the promotion and support of basic research and education in the sciences, including policies with respect to furnishing guidance toward defining the responsibilities of the Federal Government in the conduct and support of basic scientific research."

(2) By inserting before the words "scientific research programs and activities" in section 3 thereof the word "basic".

(3) (i) By adding the word "and" at the end of paragraph (a) of section 8 thereof, (ii) by deleting the semicolon and the word "and" at the end of paragraph (b) of section 8 and inserting in lieu thereof a period, and (iii) by revoking paragraph (c) of section 8.

(4) By adding at the end of the order a new section 10 reading as follows:

"SEC. 10. The National Science Foundation shall provide leadership in the effective coordination of the scientific information activities of the Federal Government with a view to improving the availability and dissemination of scientific information. Federal agencies shall cooperate with and assist the National Science Foundation in the performance of this function, to the extent permitted by law."

(c) The provisions of Executive Order No. 10521, as hereby amended, shall not limit the functions of the Council under this order. The provisions of this order shall not limit the functions of any Federal agency or officer under Executive Order No. 10521, as hereby amended.

(d) The Council shall be advisory to the President and to the heads of Federal agencies represented on the Council; accordingly, this order shall not be construed as subjecting any agency, officer, or function to control by the Council.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,  
March 13, 1959.

[F.R. Doc. 59-2304; Filed, Mar. 13, 1959; 4:24 p.m.]

**RULES AND REGULATIONS**

**Title 7—AGRICULTURE**

**Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture**

[Lemon Reg. 781 Amdt. 1]

**PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

**Limitation of Handling**

**Findings.** (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937,

as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because

the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

**Order, as amended.** The provisions in paragraph (b)(1) (i) and (ii) of § 953.888 (Lemon Regulation 781, 24 F.R. 1701) are hereby amended to read as follows:

- (i) District 1: 14,830 cartons;
- (ii) District 2: 217,620 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: March 12, 1959.

[SEAL] FLOYD F. HEDLUND,  
Acting Director, Fruit and Vegetable  
Division, Agricultural  
Marketing Service.

[F.R. Doc. 59-2257; Filed, Mar. 16, 1959;  
8:49 a.m.]

## PART 1015—CUCUMBERS GROWN IN FLORIDA

### Approval of Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 118 and Order No. 115 (7 CFR Part 1015; 22 F.R. 6083), regulating the handling of cucumbers grown in Florida, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), was published in the FEDERAL REGISTER December 10, 1958 (23 F.R. 9560). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the Florida Cucumber Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that:

#### § 1015.202 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the Florida Cucumber Committee, established pursuant to Marketing Agreement No. 118 and this part, to enable such committee to perform its functions pursuant to the provisions of the aforesaid marketing agreement and order, during the fiscal period ending July 31, 1959, will amount to \$70,330.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 118 and this part, shall be two and one-half cents (\$0.025) per 54-pound bushel of cucumbers, or respective equivalent quantities thereof, handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 118 and this part.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated March 12, 1959, to become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] FLOYD F. HEDLUND,  
Acting Director,  
Fruit and Vegetable Division.

[F.R. Doc. 59-2259; Filed, Mar. 16, 1959;  
8:49 a.m.]

## Title 12—BANKS AND BANKING

### Chapter I—Comptroller of the Currency, Treasury Department PART 7—INTERPRETATIONS

#### National Banks Acting as Travel Agents

##### § 7.1 National banks acting as travel agents.

The Comptroller of the Currency has interpreted R.S. 5136, as amended (12 U.S.C. 24), as indicated in the following letter addressed to counsel for the American Society of Travel Agents:

Dear Mr. \_\_\_\_\_:

Reference is made to our recent conference concerning the question of national banks acting as travel agents which has been the subject to prior correspondence and conferences with you over the past several months.

As you know, we have had this matter under study for a period of some months. It appears clear that national banks may, as an incidental power, provide travel services for their customers, as they have been doing for many years, and that they may have the reasonable rights and benefits that flow therefrom. We believe that you concede that national banks may as an incidental power furnish such services, but you take the position that they may not participate in the carriers' conference system which establishes uniform rates of compensation, and uniform obligations to perform, on all participating travel agents.

Whether national banks may so participate and whether they can or should enter into agreements in this connection would appear to be a matter to be determined by the banks concerned and their respective counsel, based upon the facts and circumstances of each particular case. As you know, some national banks have been doing so.

It is anticipated that the above position will be made public at an early date.

Very truly yours,

RAY M. GIDNEY,  
Comptroller of the Currency.

(R.S. 5136; 12 U.S.C. 24)

[SEAL] RAY M. GIDNEY,  
Comptroller of the Currency.

[F.R. Doc. 59-2258; Filed, Mar. 16, 1959;  
8:48 a.m.]

## Title 16—COMMERCIAL PRACTICES

### Chapter I—Federal Trade Commission

[Docket 7189]

#### PART 13—DIGEST OF CEASE AND DESIST ORDERS.

##### Greenwood Furs, Inc. and Maury Green

Subpart—*Invoicing products falsely:*  
§ 13.1108 *Invoicing products falsely:* Fur Products Labeling Act. Subpart—*Misrepresenting oneself and goods—Prices:*  
§ 13.1810 *Fictitious marking.* Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1852 *For-*

*mal regulatory and statutory requirements:* Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45 69f) [Cease and desist order, Greenwood Furs, Inc., et al., New York, N.Y., Docket 7189, Feb. 17, 1959]

*In the Matter of Greenwood Furs, Inc., a Corporation, and Maury Green, Individually and as an Officer of Said Corporation.*

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in New York City with violating the Fur Products Labeling Act by setting out fictitious prices in invoicing and by failing to maintain adequate records as a basis for such pricing claims.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on February 17 the decision of the Commission.

The order to cease and desist is as follows:

*It is ordered,* That respondents Greenwood Furs, Inc., a corporation, and its officers, and Maury Green, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such product in the recent regular course of their business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, which represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such product in the recent regular course of their business;

C. Making claims or representations in advertisements that prices are reduced from regular or usual prices, unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is further ordered*, That the respondent, Greenwood Furs, Inc., a corporation, and Maury Green, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the aforesaid initial decision.

Issued: February 17, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,  
Secretary.

[F.R. Doc. 59-2240; Filed, Mar. 16, 1959; 8:46 a.m.]

[Docket 6498]

**PART 13—DIGEST OF CEASE AND DESIST ORDERS**

**Voss Hair Experts of Georgia**

Subpart—*Advertising falsely or misleadingly*: § 13.15 *Business status, advantages, or connections*: Qualifications and abilities; unique or special status or advantages; § 13.170 *Qualities or properties of product or service*. Subpart—*Using misleading name*—Vendor: § 13.2455 *Qualifications*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, George M. Voss trading as Voss Hair Experts of Georgia, Atlanta, Ga., Docket 6498, Feb. 9, 1959]

*In the Matter of George M. Voss, Trading as Voss Hair Experts of Georgia*

This proceeding was heard by a hearing examiner on the complaint of the Commission charging an individual in Atlanta, Ga., with representing falsely, particularly in newspaper advertising, that through use of his hair and scalp preparations, methods, and treatments, in his place of business and by purchasers of the preparations in their homes, baldness would be prevented and overcome, growth of new and thicker hair would be promoted and lost hair restored, dandruff cured, etc.; and with representing himself falsely as a "Trichologist" and the "Nation's leading hair expert".

After full hearing, the hearing examiner made his initial decision including findings, conclusion, and order to cease and desist. The Commission denied respondent's appeal therefrom, directed slight modification of the initial decision, and on February 9 adopted the initial decision as so modified as the decision of the Commission.

The order to cease and desist is as follows:

*It is ordered*, That the respondent George M. Voss trading as Voss Hair Experts of Georgia or under any other name or names and respondent's agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of the various cosmetic

or other preparations set out in the findings herein, or of any other preparations for use in the treatment of hair and scalp conditions, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That the use of such preparations alone or in conjunction with any method of treatment will:

(1) Permanently eliminate or cure dandruff, itching, dryness, or oiliness of the scalp,

(2) Cause fuzz to be replaced with long or strong hair,

(3) Prevent or overcome excessive hair loss or baldness, unless such representation be expressly limited to cases other than those known as male pattern baldness and unless the advertisement clearly and conspicuously reveals that in the great majority of cases of baldness and excessive hair loss, respondent's said preparations and treatments are of no value whatever,

(4) Cause new hair to grow, cause hair to grow thicker, cause lost hair to be replaced with new hair, or otherwise grow hair, unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals that the use of said preparations and treatment will be of no value whatever in the great majority of cases,

(b) That respondent, his agents, representatives or employees have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair, or are trichologists or scalp specialists.

By "Final Order", report of compliance was required as follows:

*It is further ordered*, That respondent, George M. Voss, shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: February 9, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,  
Secretary.

[F.R. Doc. 59-2241; Filed, Mar. 16, 1959; 8:46 a.m.]

**Title 22—FOREIGN RELATIONS**

**Chapter I—Department of State**

[Dept. Reg. 108.391]

**PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANT ALIENS UNDER THE IMMIGRATION AND NATIONALITY ACT**

**Nonimmigrant Documentary Waivers**

Part 41, Chapter I, Title 22 of the Code of Federal Regulations, is hereby

amended by the addition of the following new section:

**§ 41.7 Waiver of visa and/or passport requirements by joint action of consular officers and immigration officers.**

The provisions of section 212(a) (26) of the act prescribing the documentary requirements for nonimmigrants may be waived by joint action of consular officers abroad and immigration officers pursuant to the authority contained in section 212(d) (4) (A) of the Act in individual cases of aliens who satisfy the consular officer serving the port or place of embarkation, after consultation with and concurrence by the appropriate immigration officer, that their cases come within any of the following situations which are hereby declared to be emergencies within the meaning of section 212(d) (4) (A) of the act:

(a) An alien having his residence in foreign contiguous territory who does not qualify for the benefits of any waiver provided in § 41.6, and who is a member of a visiting group or excursion proceeding to the United States under circumstances which make the timely procurement of a passport and visa impracticable.

(b) An alien applying for a visa, whose passport is valid for less than the minimum period prescribed in section 212(a) (26) of the Act, but will be valid upon his arrival in the United States, and who is embarking for the United States at a port or place remote from any foreign diplomatic or consular establishment at which the passport could be revalidated.

(c) An alien applying for a visa, whose passport is valid for less than the minimum period prescribed in section 212(a) (26) of the Act, and whose government as a matter of policy does not revalidate passports more than six months in advance of their expiration or until they actually expire.

(d) An alien who is well and favorably known at the consular office, who has previously been issued a nonimmigrant visa, and who is embarking on a direct flight to the United States under emergent circumstances which preclude the timely issuance of a visa.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104)

The regulation contained in this order shall become effective upon publication in the FEDERAL REGISTER. The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making and delayed effective date are inapplicable to this order because the regulation contained therein involves foreign affairs functions of the United States.

Dated: March 9, 1959.

JOHN W. HANES, Jr.,  
Administrator, Bureau of Security and Consular Affairs,  
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[F.R. Doc. 59-2256; Filed, Mar. 16, 1959; 8:49 a.m.]

# Title 26—INTERNAL REVENUE, 1954

## Chapter I—Internal Revenue Service, Department of the Treasury

### SUBCHAPTER A—INCOME TAX

[T.D. 6369]

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

### Regulated Investment Companies

On October 28, 1958, notice of proposed rule making with respect to the amendment of the income tax regulations (26 CFR Part 1) under sections 851-855 of the Internal Revenue Code of 1954 (relating to regulated investment companies) to reflect the changes made by section 2 of the Act of July 11, 1956 (Public Law 700, 84th Cong., 70 Stat. 530), and by sections 38 and 101 of the Technical Amendments Act of 1958 (72 Stat. 1638, 1674) was published in the FEDERAL REGISTER (23 F.R. 8299). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as so published is hereby adopted, subject to the changes set forth below.

1. Section 1.852-1, as set forth in paragraph 4 to the notice of proposed rule making, is revised.

2. Paragraph (b) (2) (ii) of § 1.852-2 is revised by adding the following new sentence at the end thereof: "The earnings and profits of a regulated investment company shall not be reduced by the amount of tax which is imposed by section 852(b) (3) (A) on an amount designated as undistributed capital gains and which is paid by the corporation but deemed paid by the shareholder."

3. Section 1.852-5 is amended by designating the existing paragraph as paragraph (b) and by inserting immediately after the heading of such section a new paragraph (a).

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL]

CHARLES I. FOX,  
Acting Commissioner  
of Internal Revenue.

Approved: March 11, 1959.

FRED C. SCRIBNER, JR.,  
Acting Secretary of the Treasury.

### § 1.851 [Amendment]

Section 1.851 has been amended—

(A) By striking out "not less than 60 days" in the first sentence of subsection (e) (1) of section 851 and inserting in lieu thereof "not earlier than 60 days";

(B) By striking out "issues" in subsection (e) (2) of section 851 and inserting in lieu thereof "issuer"; and

(C) By adding a historical note at the end thereof as follows:

(Sec. 851 as amended by sec. 38, Technical Amendments Act 1958 (72 Stat. 1638))

### § 1.851-6 [Amendment]

The second sentence of paragraph (a) (1) of § 1.851-6 has been amended by striking out "not less than 60 days" and

inserting in lieu thereof "not earlier than 60 days".

Section 1.852 has been amended to read as follows:

### § 1.852 Statutory provisions; taxation of regulated investment companies and their shareholders.

SEC. 852. *Taxation of regulated investment companies and their shareholders—*

(a) *Requirements applicable to regulated investment companies.* The provisions of this subchapter (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) The deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its investment company taxable income for the taxable year (determined without regard to subsection (b) (2) (D)), and

(2) The investment company complies for such year with regulations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of its outstanding stock.

(b) *Method of taxation of companies and shareholders—*(1) *Imposition of normal tax and surtax on regulated investment companies.* There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a normal tax and surtax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. For purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such investment company for the taxable year (computed without regard to capital gains dividends) shall be reduced by the deduction provided by section 242 (relating to partially tax-exempt interest).

(2) *Investment company taxable income.* The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the excess, if any, of the net long-term capital gain over the net short-term capital loss.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends.

(E) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(3) *Capital gains—*(A) *Imposition of tax.* There is hereby imposed for each taxable year in the case of every regulated investment company a tax of 25 percent of the excess, if any, of the net long-term capital gain over the sum of—

(i) The net short-term capital loss, and

(ii) The deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) *Treatment of capital gain dividends by shareholders.* A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 6 months.

(C) *Definition of capital gain dividend.* A capital gain dividend means any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate

amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year described in section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(D) *Treatment by shareholders of undistributed capital gains.* (1) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 30 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (1), the tax of 25 percent imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased by 75 percent of the amounts required by this subparagraph to be included in computing his long-term capital gains.

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary or his delegate.

(c) *Earnings and profits.* The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term "regulated investment company" includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

(Sec. 852 as amended by sec. 2, Act of July 11, 1956 (Pub. Law 700, 84th Cong., 70 Stat. 530); sec. 101, Technical Amendments Act 1958 (72 Stat. 1674))

Section 1.852-1 has been amended to read as follows:

### § 1.852-1 Taxation of regulated investment companies.

(a) *Requirements applicable thereto—*

(1) *In general.* Section 852(a) denies the application of the provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (other than section 852(c)), relating to earnings and profits) to a regulated investment company for a taxable year beginning after February 28, 1958, unless—

(i) The deduction for dividends paid for such taxable year as defined in section 561 (computed without regard to capital gain dividends) is equal to at least 90 percent of its investment company taxable income for such taxable year (determined without regard to the provisions of section 852(b)(2)(D) and paragraph (d) of § 1.852-3); and

(ii) The company complies for such taxable year with the provisions of § 1.852-6 (relating to records required to be maintained by a regulated investment company).

See section 853(b)(1)(B) and paragraph (a) of § 1.853-2 for amounts to be added to the dividends paid deduction, and section 855 and § 1.855-1, relating to dividends paid after the close of the taxable year.

(2) *Special rule for taxable years of regulated investment companies beginning before March 1, 1958.* The provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (including section 852(c)) are not applicable to a regulated investment company for a taxable year beginning before March 1, 1958, unless such company meets the requirements of section 852(a) and subparagraph (1)(i) and (ii) of this paragraph.

(b) *Failure to qualify.* If a regulated investment company does not meet the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of this section for the taxable year, it will, even though it may otherwise be classified as a regulated investment company, be taxed in such year as an ordinary corporation and not as a regulated investment company. In such case, none of the provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (other than section 852(c) in the case of taxable years beginning after February 28, 1958) will be applicable to it. For the rules relating to the applicability of section 852(c), see § 1.852-5.

Section 1.852-2 has been amended by striking paragraph (b) and inserting the following in lieu thereof:

**§ 1.852-2 Method of taxation of regulated investment companies.**

(b) *Taxation of capital gains—(1) In general.* Section 852(b)(3)(A) imposes a tax of 25 percent for each taxable year on the excess, if any, of the net long-term capital gain of a regulated investment company (subject to tax under subchapter M of chapter 1 of the Internal Revenue Code) over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. For the definition of capital gain dividend paid by a regulated investment company, see section 852(b)(3)(C) and paragraph (c) of § 1.852-4. See section 855 and § 1.855-1, relating to dividends paid after the close of the taxable year.

(2) *Undistributed capital gains—(i) In general.* A regulated investment company (subject to tax under subchapter M) may, for taxable years beginning after December 31, 1956, designate under section 852(b)(3)(D) an amount

of undistributed capital gains to each shareholder of the company. For the definition of the term "undistributed capital gains" and for the treatment of such amounts by a shareholder, see paragraph (b)(2) of § 1.852-4. For the rules relating to the method of making such designation, the returns to be filed, and the payment of the tax in such cases, see paragraph (a) of § 1.852-9.

(ii) *Effect on earnings and profits of a regulated investment company.* If a regulated investment company designates an amount as undistributed capital gains for a taxable year, the earnings and profits of such regulated investment company for such taxable year shall be reduced by the total amount of the undistributed capital gains so designated and its capital account shall be increased by 75 percent of such amount. The earnings and profits of a regulated investment company, shall not be reduced by the amount of tax which is imposed by section 852(b)(3)(A) on an amount designated as undistributed capital gains and which is paid by the corporation but deemed paid by the shareholder.

**§ 1.852-3 [Amendment]**

Paragraph (d) of § 1.852-3 has been amended by striking the reference to "paragraph (b) of § 1.852-4" therein and inserting in lieu thereof "paragraph (c) of § 1.852-4".

Section 1.852-4 has been amended to read as follows:

**§ 1.852-4 Method of taxation of shareholders of regulated investment companies**

(a) *Ordinary income.* (1) Except as otherwise provided in paragraph (b) of this section (relating to capital gains), a shareholder receiving dividends from a regulated investment company shall include such dividends in gross income for the taxable year in which they are received.

(2) See section 853(b)(2) and (c) and paragraph (b) of § 1.853-2 and § 1.853-3 for the treatment by shareholders of dividends received from a regulated investment company which has made an election under section 853(a) with respect to the foreign tax credit. See section 854 and §§ 1.854-1 through 1.854-3 for limitations applicable to dividends received from regulated investment companies for the purpose of the credit under section 34, the exclusion from gross income under section 116, and the deduction under section 243. See section 855(b) and (d) and paragraphs (c) and (f) of § 1.855-1 for treatment by shareholders of dividends paid by a regulated investment company after the close of the taxable year in the case of an election under section 855(a).

(b) *Capital gains—(1) In general.* Under section 852(b)(3)(B), shareholders of a regulated investment company who receive capital gain dividends (as defined in paragraph (c) of this section), in respect of the capital gains of an investment company for a taxable year for which it is taxable under subchapter M of chapter 1 of the Internal Revenue Code as a regulated investment company, shall treat such capital gain dividends as gains from the sale or ex-

change of capital assets held for more than 6 months and realized in the taxable year of the shareholder in which the dividend was received.

(2) *Undistributed capital gains.* (i) A person who is a shareholder of a regulated investment company at the close of a taxable year of such company for which it is taxable under subchapter M shall include in his gross income as a gain from the sale or exchange of a capital asset held for more than 6 months any amount of undistributed capital gains. The term "undistributed capital gains" means the amount designated as undistributed capital gains in accordance with paragraph (a) of § 1.852-9, but such amount shall not exceed the shareholder's proportionate part of the amount subject to tax under section 852(b)(3)(A). Such amount shall be included in gross income for the taxable year of the shareholder in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. For certain administrative provisions relating to undistributed capital gains, see § 1.852-9.

(ii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subdivision (i) of this subparagraph shall be deemed to have paid a tax equal to 25 percent of such amount for his taxable year for which such amount is so includible. Such shareholder is entitled to a credit or refund of the tax so deemed paid in accordance with the rules provided in paragraph (c)(2) of § 1.852-9.

(iii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subdivision (i) of this subparagraph shall increase the adjusted basis of the shares of stock with respect to which such amount is so includible by 75 percent of such amount.

(3) *Partners and partnerships.* If the shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a partnership, such amount shall be included in the gross income of the partnership for the taxable year of the partnership in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. The amount so includible by the partnership shall be taken into account by the partners as distributive shares of the partnership gains and losses from sales or exchanges of capital assets held for more than 6 months pursuant to section 702(a)(2) and paragraph (a)(2) of § 1.702-1. The tax with respect to the undistributed capital gains is deemed paid by the partnership (under section 852(b)(3)(D)(ii) and subparagraph (2)(ii) of this paragraph), and the credit or refund of such tax shall be taken into account by the partners in accordance with section 702(a)(8) and paragraph (a)(8)(ii) of § 1.702-1 and paragraph (c)(2) of § 1.852-9. In accordance with section 705(a), the partners shall increase the basis of their partnership interests un-

der section 705(a)(1) by the distributive shares of such gains, and shall decrease the basis of their partnership interests by the distributive shares of the amount of the tax under section 705(a)(2)(B) (relating to certain nondeductible expenditures) and paragraph (a)(3) of § 1.705-1.

(4) *Nonresident alien individuals.* If the shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a nonresident alien individual, such shareholder shall be treated, for purposes of section 871 and the regulations thereunder, as having realized a long-term capital gain in such amount on the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated.

(5) *Effect on earnings and profits of corporate shareholders of a regulated investment company.* If a shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a corporation, such corporation, in computing its earnings and profits for the taxable year for which such amount is so includible, shall treat such amount as if it had actually been received and the taxes paid shall include any amount of tax liability satisfied by a credit under section 852(b)(3)(D) and subparagraph (2) of this paragraph.

(c) *Definition of capital gain dividend.* A capital gain dividend, as defined in section 852(b)(3)(C), is any dividend or part thereof which is designated by a regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For example, a regulated investment company making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1955, that of a distribution of \$500,000 made December 15, 1955, \$200,000 constituted a capital gain dividend, amounting to \$2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year and that such excess was \$100,000 instead of \$200,000. In such case each shareholder would have received a capital gain dividend of \$1 per share instead of \$2 per share.

Section 1.852-5 has been amended by designating the existing paragraph as paragraph (b) and by inserting immedi-

ately after the heading of such section the following new paragraph:

**§ 1.852-5 Earnings and profits of a regulated investment company.**

(a) Any regulated investment company, whether or not such company meets the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of § 1.852-1, shall apply paragraph (b) of this section in computing its earnings and profits for a taxable year beginning after February 28, 1958. However, for a taxable year of a regulated investment company beginning before March 1, 1958, paragraph (b) of this section shall apply only if the regulated investment company meets the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of § 1.852-1.

(b) \* \* \*

The following section has been inserted after § 1.852-8:

**§ 1.852-9 Special procedural requirements applicable to designation under section 852(b)(3)(D).**

(a) *Regulated investment company—(1) Notice to shareholder.* A designation of undistributed capital gains under section 852(b)(3)(D) and paragraph (b)(2)(i) of § 1.852-2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of the company at the close of the company's taxable year. The notice on Form 2439 shall show the name and address of the regulated investment company, the taxable year of the company for which the designation is made, the name and address of the shareholder, the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains, and the tax paid with respect thereto by the company, which tax is deemed to have been paid by the shareholder. Form 2439 shall be prepared in triplicate, and copies B and C of the form shall be mailed to the shareholder on or before the 30th day following the close of the company's taxable year. Copy A of each Form 2439 must be associated with the undistributed capital gains tax return of the company (Form 2438), as provided in subparagraph (2) of this paragraph.

(2) *Return of undistributed capital gains tax—(i) Form 2438.* Every regulated investment company which designates undistributed capital gains for any taxable year beginning after December 31, 1956, in accordance with subparagraph (1) of this paragraph, shall file for such taxable year an undistributed capital gains tax return on Form 2438 including on such return the total of its undistributed capital gains so designated and the tax with respect thereto. The return on Form 2438 shall be prepared in duplicate and shall set forth fully and clearly the information required to be included therein. The original of Form 2438 shall be filed on or before the 30th day after the close of the company's taxable year with the district director with whom the company is required to file its income tax return on Form 1120 for such year. The duplicate copy of Form 2438 for the taxable year shall be attached to and filed with the income tax

return of the company on Form 1120 for such taxable year.

(ii) *Copies A of Form 2439.* There shall be submitted with the company's return on Form 2438 all copies A of Form 2439 furnished by the company to its shareholders in accordance with subparagraph (1) of this paragraph. The copies A of Form 2439 shall be accompanied by lists (preferably in the form of adding machine tapes) of the amounts of undistributed capital gains and of the tax paid with respect thereto shown on such forms. The totals of the listed amounts of undistributed capital gains and of tax paid with respect thereto must agree with the corresponding entries in the return on Form 2438.

(3) *Payment of tax.* The tax required to be returned on Form 2438 shall be paid by the regulated investment company on or before the 30th day after the close of the company's taxable year to the district director with whom the return on Form 2438 is required to be filed.

(b) *Shareholder of record not actual owner—(1) Notice to actual owner.* In any case in which a notice on Form 2439 is mailed pursuant to paragraph (a)(1) of this section by a regulated investment company to a shareholder of record who is a nominee of the actual owner or owners of the shares of stock to which the notice relates, the nominee shall furnish to each such actual owner notice of the owner's proportionate share of the amounts of undistributed capital gains and tax with respect thereto, shown on the Form 2439 received by the nominee from the regulated investment company. The nominee's notice to the actual owner shall be prepared in triplicate on Form 2439 and shall contain the information prescribed in paragraph (a)(1) of this section, except that the name and address of the nominee, identified as such, shall be entered on the form in addition to, and in the space provided for, the name and address of the regulated investment company, and the amounts of undistributed capital gains and tax with respect thereto entered on the form shall be the actual owner's proportionate share of the corresponding items shown on the nominee's notice from the regulated investment company. Copies B and C of the Form 2439 prepared by the nominee shall be mailed to the actual owner on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year.

(2) *Transmittal of Form 2439.* The nominee shall enter the word "Nominee" in the upper right hand corner of copy B of the notice on Form 2439 received by him from the regulated investment company, and on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year shall transmit such copy B, together with all copies A of Form 2439 prepared by him pursuant to subparagraph (1) of this paragraph, to the internal revenue officer with whom his income tax return is required to be filed.

(c) *Shareholders—(1) Return requirements.* The copy B of the Form 2439 furnished to a shareholder by the

regulated investment company or by a nominee, as provided in paragraph (a) or (b), respectively, of this section, shall be attached to the return of income made by the shareholder for his taxable year in which the amount of undistributed capital gains is includible in gross income, as provided in paragraph (b) (2) of § 1.852-4.

(2) *Credit or refund*—(i) *In general.* The amount of the tax paid by the regulated investment company with respect to the undistributed capital gains required under section 852(b) (3) (D) and paragraph (b) (2) of § 1.852-4 to be included by a shareholder in his computation of long-term capital gains for any taxable year is deemed paid by such shareholder under section 852(b) (3) (D) (ii) and such payment constitutes for purposes of section 6513(a) (relating to time tax considered paid), an advance payment in like amount of the tax imposed under chapter 1 of the Code for such taxable year. In the case of an overpayment of tax within the meaning of section 6401, see section 6402 and the regulations thereunder for rules applicable to the treatment of an overpayment of tax and section 6511 and the regulations thereunder with respect to the limitations applicable to the credit or refund of an overpayment of tax.

(ii) *Form to be used.* Claim for refund or credit of the tax deemed to have been paid by a shareholder with respect to an amount of undistributed capital gains shall be made on the shareholder's income tax return for the taxable year in which such amount of undistributed capital gains is includible in gross income. In the case of a shareholder which is a partnership, claim shall be made by the partners on their income tax returns for refund or credit of their distributive shares of the tax deemed to have been paid by the partnership. In the case of a shareholder who is a non-resident alien individual or a nonresident foreign corporation claiming credit or refund of the tax deemed paid by such shareholder on undistributed capital gains, see section 6012 and the regulations thereunder. In the case of a shareholder which is exempt from tax under section 501(a) and to which section 511 does not apply for the taxable year, claim for refund of the tax deemed to have been paid by such shareholder on an amount of undistributed capital gains for such year shall be made on Form 843 and copy B of Form 2439 furnished to such shareholder shall be attached to its claim. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see § 301.6402-2 of the Regulations on Procedure and Administration (Part 301 of this chapter), relating to claims for credit or refund, and § 301.6402-3 of such regulations, relating to special rules applicable to income tax.

(d) *Penalties.* For criminal penalties for willful failure to file a return, supply information, or pay tax, and for filing a false or fraudulent return, statement, or other document, see sections 7203, 7206, and 7207.

§ 1.853-3 [Amendment]

The first sentence of § 1.853-3 has been amended by striking the words "not less than" contained therein and inserting in lieu thereof "not later than".

§ 1.852-4 [Amendment]

Paragraph (b) of § 1.854-1 has been amended by striking the reference to "paragraph (b) of § 1.852-4" therein and inserting in lieu thereof "paragraph (c) of § 1.852-4".

§ 1.855-1 [Amendment]

Section 1.855-1 has been revised as follows:

(A) Paragraph (a) (3) has been amended by striking the reference to "paragraph (b) of § 1.852-4" therein and inserting in lieu thereof "paragraph (c) of § 1.852-4".

(B) Paragraph (e) has been amended by striking the reference to "paragraph (b) of § 1.852-4" wherever it appears therein and inserting in lieu thereof "paragraph (c) of § 1.852-4" in each such place.

[F.R. Doc. 59-2255; Filed, Mar. 16, 1959; 8:49 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER M—MISCELLANEOUS

PART 141—SOLICITATION OF COMMERCIAL LIFE INSURANCE ON MILITARY INSTALLATIONS

The Assistant Secretary of Defense (Manpower, Personnel and Reserve) approved the following on February 26, 1959:

- Sec.
- 141.1 Purpose and scope.
- 141.2 Policy.
- 141.3 Minimum requirements for companies.
- 141.4 Supervision of solicitation.
- 141.5 Use of the allotment system.
- 141.6 Withdrawal of solicitation privilege.
- 141.7 Reports.

AUTHORITY: §§ 141.1 to 141.7 issued under sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a.

§ 141.1 Purpose and scope.

The purpose of this part is to establish Department of Defense policy with respect to the solicitation of members of the Armed Forces for the purchase of life insurance on U.S. military installations.

§ 141.2 Policy.

(a) *General.* The conduct of a private business, including the sale of life insurance, on a military installation is a privilege the control of which is a responsibility vested in the installation commander subject to such regulations as may be prescribed by the Secretary of the military department concerned.

(b) *Withdrawal of privilege.* The privilege to solicit on military installations may be withdrawn for cause.

(c) *Solicitation on military installations in the United States, a territory or possession.* Commanders of installations

over which exclusive jurisdiction has been ceded to the United States will not permit solicitation by the representative of any commercial company, unless both the company and its agents are properly licensed by any one of the states, the territory or the District of Columbia. Where the state has retained exclusive or concurrent jurisdiction over any part of the installation, the company and its agents must qualify under the laws of that particular state to be eligible to solicit on the installation.

(d) *Solicitation on U.S. military installations in foreign areas; companies.* The Department of Defense will grant permission to companies to solicit on military installations in foreign overseas areas under this part. Applications will be submitted to the Department of Defense during the month of April each year. Accreditation will be valid for one year unless sooner withdrawn.

(e) *Solicitation on U.S. military installations in foreign areas; agents.* An agent may solicit business on military installations in foreign areas if:

(1) The company he represents has been granted permission to solicit under this part;

(2) His name appears on the list maintained by the Chairman of the DOD Life Insurance Board; and

(3) He has been granted permission by the commanding officer of the military installation on which he desires to solicit.

(f) *Counseling.* Commanders will provide counseling for the personnel under their command concerning the purchase of life insurance. It should be thoroughly explained that the insurance contract is intended to continue over a period of years, and that, if the insurance policy is allowed to lapse, the individual may not recover more than the cash value at the time the policy lapsed. Commanders should ensure that such transactions are entered into in good faith and only after a full understanding of the agreement by the military member. Counseling is mandatory for personnel of pay grades E-1, E-2, and E-3. It is encouraged for all others.

(g) *Department of Defense Life Insurance Board.* The Department of Defense Life Insurance Board has been established by DoD Instruction 5120.23 (see also § 141a.3 of this subchapter) as the principal advisor to the Secretary of Defense in all matters pertaining to the sale of commercial life insurance to members of the Armed Forces. It is a function of this Board to recommend final action on applications received from insurance companies to solicit commercial life insurance on installations in foreign areas. The functions of the Board also include the recommendation of final action against companies for cause, including the withdrawal of soliciting privileges. In this connection the Board receives and reviews reports of violations of regulations.

§ 141.3 Minimum requirements for companies.

(a) *Qualification statements by companies.* Before a company may be authorized to solicit on a military installa-

tion, the commanding officer will require the company to submit a notarized statement by its president or vice president: (1) Listing all policies, together with their form numbers, to be offered on the military installation; (2) assuring that only the policies listed are to be so offered and that such policies comply with paragraph (b) of this section; and (3) indicating the name(s) of the agent(s) authorized to solicit and that the company assumes full responsibility for the actions of the agent(s) named with respect to such solicitation.

(b) *Minimum policy requirements.* The minimum requirements for insurance policies offered on military installations are as follows:

(1) Reserves at least equal to those produced by the Commissioners Reserve Valuation Method as defined in the Standard Valuation Law when calculated according to the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of 3½ percent per annum;

(2) Policies must comply with the Standard Non-Forfeiture and Valuation Law as interpreted by the "Working Committee of the Life Insurance Committee, National Association of Insurance Commissioners" (commonly known as the Hooker Committee). Attention is particularly directed to the need for complying with at least the minimum values provided by the Standard Non-Forfeiture and Valuation Law.

(3) The existence of exclusion or restrictive clauses or provisions, including War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc., must be plainly indicated on the face of the policy.

(4) Statements referring to dividends must indicate that the dividends are estimates and are not guaranteed.

#### § 141.4 Supervision of solicitation.

(a) *Command supervision.* (1) The Secretary of each military department will issue regulations to ensure that solicitation on military installations is properly supervised and controlled. These regulations will include a prohibition against:

- (i) The solicitation of recruits or trainees and "mass" or "captive" audiences;
- (ii) Practices involving rebates or elimination of competition; and
- (iii) Military personnel on active duty representing any insurance company.

(2) An official identification card may not be used to gain entrance to a military installation to solicit the sale of life insurance.

(b) *Information to be required of agents.* For each proposed sale to enlisted personnel in the grades of E-1, E-2, and E-3, the agent must provide the applicant and the commander the following information:

- (1) Name and address of the company;
- (2) Name and address of the agent;
- (3) Type of policy;
- (4) Amount of life insurance;
- (5) Premium;
- (6) Full name of person insured;
- (7) Death benefit, guaranteed cash value, extended insurance, pure endow-

ment (if any), at the end of the first to the fifth years inclusive and the tenth, fifteenth, and twentieth years; and

(8) List of all exclusion provisions which are incorporated in the policy, such as War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc.

Commanders will use the foregoing information in connection with counseling.

(c) *Limitations.* Solicitation will be on an individual basis, preferably by appointment, in a specific appropriate location(s), and at specified times designated by the installation commander.

(d) *Installation regulations.* Commanders may issue regulations governing solicitation on their installations. When a commander desires to prescribe additional safeguards which require companies to meet more restrictive requirements than contained in regulations of the military departments, such additional requirements or restrictions must first be reviewed and confirmed by the appropriate military department. Additional regulatory controls with regard to individual agents are not required to be so reviewed and confirmed.

(e) *Statement by agent.* Before being permitted to solicit, the agent will be furnished a copy of the applicable insurance regulations and required to indicate in writing that he understands them and that any violation of the regulations may result in the withdrawal of the privilege of solicitation.

#### § 141.5 Use of the allotment system.

(a) Allotments of military pay will be made in accordance with DOD Directive 7330.1, "Voluntary Military Pay Allotments."

(b) *Allotment forms may not be issued to agents.* The possession of allotment forms by agents is cause for withdrawal of the privilege of solicitation.

(c) At least seven days must elapse between the signing of an insurance application and the certification of an allotment for personnel in pay grades E-1, E-2, and E-3. Allotment forms will be completed before signature.

(d) When the enlisted member in grade E-1, E-2, or E-3 purchases insurance on a military installation and pays at least the first full monthly premium in cash, the 7-day waiting period will not be made applicable but the prescribed counselling will be accomplished.

#### § 141.6 Withdrawal of solicitation privilege.

(a) The Secretary of Defense may withdraw the privilege of solicitation from companies and agents upon receipt of information evidencing the utilization of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertising or other misleading sales literature.

(b) The military departments may permit installation commanders to suspend an agent for cause for a reasonable period. When such suspension occurs, the agent, the company he represents, the military department concerned, and the insurance commissioners of the States in which he is licensed will be promptly notified. The department con-

cerned will ensure that complete investigation is made and that a report of such investigation is submitted to that department.

(c) The withdrawal of the soliciting privilege should be resorted to only for good and sufficient reasons. Final action to withdraw from an agent the privilege of soliciting on all installations within the command rests with the military department or, as to installations in foreign areas, with the theater commander. When such action is taken, the agent, the company he represents, the insurance commissioners of the States in which the agent is licensed, the other military departments, and the Assistant Secretary of Defense (Manpower, Personnel and Reserve) will be notified. When the privilege of solicitation is withdrawn by one military department, such withdrawal will be effective in the other military departments.

(d) For serious or repeated violations, a commander may suspend a company temporarily. Where such action is instituted, the military department concerned will be promptly notified. The military department will then forward detailed information to the Office of the Secretary of Defense. Companies may be permanently prohibited from soliciting on military installations only by action of the Secretary of Defense.

#### § 141.7 Reports.

The military departments will report to the Assistant Secretary of Defense (Manpower, Personnel and Reserve) the following violations or actions in duplicate immediately after such violations or actions occur. As a minimum the agent's name, the company's name and a description of the violation will be reported.

(a) Violations by agents resulting in suspension of the solicitation privilege on a limited basis. Notifications will be made as indicated in § 141.6(b).

(b) Violations by agents resulting in suspension of the solicitation privilege throughout the military departments. Additional notifications will be made as indicated in § 141.6(c).

(c) Action taken to suspend the privilege of solicitation in the case of any life insurance company.

Report Control Symbol DD-MP&R (AR) 374 is assigned to this reporting requirement.

This Part 141 supersedes and cancels Part 141 published at 21 F.R. 458, and 5361.

MAURICE W. ROCHE,  
Administrative Secretary.

MARCH 9, 1959.

[F.R. Doc. 59-2230; Filed, Mar. 16, 1959; 8:45 a.m.]

## PART 144—SCHEDULE OF FEES AND CHARGES FOR COPYING, CERTIFICATION, AND SEARCH OF RECORDS

### Schedule of Fees

The following changes to Part 144 have been approved: Exhibit A of Part 144 has been revised in its entirety. Exhibit A, as revised, reads as follows:

EXHIBIT A—SCHEDULE OF FEES

Applicable to authorized services of copying, certifications, and search of records rendered to the public by components of the Department of Defense. Requests involving:

	Fee
1. Training and education, each.....	\$1.00
(Including requests for transcripts, certificates, and verification of attendance, course completion, and graduation from service schools and other facilities.)	
2. Medical and dental records of civilians and dependents of military personnel, each.....	2.00
(Includes requests for information from or copies of medical records including clinical records, outpatient records, dental records, and loan of X-rays.)	
3. Military membership and record:	
a. Address of record, each.....	1.00
b. Certificate in lieu, statement or verification of service, or report of separation, each.....	1.50
c. Copy or extract of order or other record (excluding medical, dental, and X-ray records), each.....	1.00
4. Photography:	
a. Still pictorial or Documentary Photographic Prints 8 x 10 black and white and not more than three prints may be sold from any individual negative on each order. Larger standard sizes of black and white prints will be furnished, if available, at proportionately higher fees.	
Single-weight glossy finish, each.....	.55
Double-weight matte finish, each.....	.60
4 x 5 color transparencies or color negative, each.....	5.00
8 x 10 color transparencies or color negative, each.....	10.00
(In quantities not to exceed three copies any one view.)	
Color prints will not be furnished for public use.	
b. Aerial Photographic Prints, contact prints, or exact negative sizes, single-weight glossy or double-weight semi-matte.	
Size 7 x 9" or 9 x 9", in quantities:	
1-100, each.....	.70
101-1000, each.....	.55
Over 1000, each.....	.50
Size 9 x 18", in quantities:	
1-100, each.....	1.40
101-1000, each.....	1.10
Over 1000, each.....	1.00
c. Aerial Photographic Indexes and Mosaic Copies in any number, size 20 x 24, each.....	1.20
d. Reproduction of Cover Overlays:	
Transparent Foil Film Overlays, each.....	1.50
Transparent Paper Overlays, each.....	.60
Transparent Paper Plot Maps, per square foot.....	.10
Photostat Plot Maps (maximum size 17½ x 23), each.....	.65
e. Motion Picture:	
16 mm or 35 mm black and white unedited footage and/or optical sound track, per foot.....	.10
Color unedited footage:	
16 mm, per foot.....	.20
16 mm inter-negative.....	.25
35 mm, per foot:	
Viewing or release print, each.....	.25
Separation master positive (3 required).....	.75
Color inter-positive, each.....	.55
Color inter-negative, each.....	.55
Magnetic Tape (per foot):	
16 mm (Direct Dubb), each.....	.05
35 mm (Direct Dubb), each.....	.05

EXHIBIT A—SCHEDULE OF FEES—CONTINUED

4. Photography—Continued	
e. Motion Picture—Continued	Fee
Searching (including overhead):	
Each hour or fraction thereof (per hour).....	\$5.00
All film used in duplication to furnish a requested end product shall be charged for on a per foot basis.	
Minimum charge (including stock search per order).....	10.00
5. Construction and engineering information.	
Copies of aerial photographic maps, specifications, permits, charts, blueprints, and other technical engineering documents.	
Searching per hour (includes overhead costs).....	2.00
First print.....	.50
Each additional print of same document.....	.25
6. Copies of medical articles and illustrations.....	(1)
7. Claims and litigations	
a. Requests from litigants pertaining to private litigation. (If not covered in 2 above.)	
Searching per hour (includes overhead costs).....	2.00
Each photocopy.....	.20
Certification and validation with seal, each.....	.50
Certification and validation without seal, each.....	.25
b. Requests pertaining to cases in which the U.S. is a party and where court rules provide for reproduction of records without cost to the Government.	
Searching per hour (includes overhead costs).....	2.00
Each photocopy.....	.20
Certification and validation with seal, each.....	.50
Certification and validation without seal, each.....	.25
c. Furnishing information from Investigative Reports, e.g., automobile collision investigations, safety reports.	
Searches, overhead, analysis and preparation of report (per hour).....	2.00
8. General:	
Furnishing any additional services not specifically provided for above as determined to be appropriate and in consonance with BOB Circular A-28 by respective agencies.	

<sup>1</sup> Standards contained in BOB Circular A-28 will be utilized in computing costs.

MAURICE W. ROCHE,  
Administrative Secretary,  
Office of the Secretary of Defense.

MARCH 10, 1959.

[F.R. Doc. 59-2231; Filed, Mar. 16, 1959; 8:45 a.m.]

Title 44—PUBLIC PROPERTY AND WORKS

Chapter I—General Services Administration

MISCELLANEOUS REPEALS

In Subchapter B—Personal Property Management, Part 50 (Bids and Awards), Part 51 (General), Part 52 (Procedures), Part 53 (Directed Procurement), and Part 54 (Standard Contracts) are repealed.

In Subchapter D—Miscellaneous Regulations, Part 150—Covenant Against Contingent Fees and Related Procedure: The provisions of this part are superseded to the extent of inconsistency with the provisions of 41 CFR Subpart 1-1.5. (See Part II of this issue.)

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

Dated: March 10, 1959.

FRANKLIN FLOETE,  
Administrator of General Services.

[F.R. Doc. 59-2301; Filed, Mar. 16, 1959; 8:51 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Oil Import Reg. 1]

OIL IMPORT REGULATION

Sec.	
1.	Purpose.
2.	Oil Import Administration.
3.	Allocation periods.
4.	Eligibility for allocations.
5.	Applications for import licenses for initial allocation periods; Districts I-IV, District V.
6.	Applications for import licenses for initial allocation periods; Puerto Rico.
7.	Applications for the allocation period July 1, 1959, through December 31, 1959, and successive periods.
8.	Licenses.
9.	Determination of quantities available for allocation; Districts I-IV, District V.
10.	Allocations of crude oil and unfinished oils; Districts I-IV.
11.	Allocations of crude oil and unfinished oils; District V.
12.	Allocations of crude oil because of inability to procure domestic crude oil by ordinary and continuous means.
13.	Allocations of finished products; Districts I-IV, District V.
14.	Determination of maximum level of imports; Puerto Rico.
15.	Allocation of crude oil and unfinished oils; Puerto Rico.
16.	Allocations of finished products; Puerto Rico.
17.	Use of imported crude oil and unfinished oils.
18.	Reports.
19.	False statements.
20.	Revocation or suspension of allocations or licenses.
21.	Appeals.
22.	Definitions.

AUTHORITY: Sections 1 to 22 issued under Proc. 3279, 24 F.R. 1781; sec. 2, 68 Stat. 360, as amended, 72 Stat. 678; 19 U.S.C. 1352a.

Section 1. Purpose.

These regulations implement Presidential Proclamation 3279, "Adjusting Imports of Petroleum and Petroleum Products into the United States," dated March 10, 1959 (24 F.R. 1781) by providing for the discharge of the responsibilities imposed upon the Secretary of the Interior.

Sec. 2. Oil Import Administration.

There is established in the Department of the Interior an Oil Import Administration under the direction of an Administrator designated by the Secretary of the Interior. The Administrator

**RULES AND REGULATIONS**

is hereby empowered to exercise, pursuant to this regulation, all of the authority conferred upon the Secretary by Proclamation 3279, and the Administrator may redelegate such authority.

**Sec. 3. Allocation periods.**

Allocations of imports of crude oil and unfinished oils will initially be made for the period March 11, 1959 through June 30, 1959. Allocations of imports of finished products will initially be made for the period April 1, 1959 through June 30, 1959. Thereafter, allocations will be made for periods of six months—that is, July 1 through December 31; January 1 through June 30.

**Sec. 4. Eligibility for allocations.**

(a) To be eligible for an allocation of imports of crude and unfinished oils in Districts I-IV or in District V, a person must (1) have refinery capacity in the respective districts and (2) in respect of an allocation for the allocation period March 11, 1959, through June 30, 1959, have had refinery inputs in the respective districts for the calendar year 1958 and (3) in respect of the allocation period July 1, 1959, through December 31, 1959, and each successive allocation period thereafter have had refinery inputs in the respective districts for the year ending three months prior to the beginning of the allocation period for which the allocation is requested.

(b) To be eligible for an allocation of imports of crude oil and unfinished oils for Puerto Rico, a person must have refinery capacity in Puerto Rico and must have had refinery inputs in Puerto Rico during the months of July, August, and September of the year 1958.

(c) (1) To be eligible for an allocation of imports of finished products, other than residual fuel oil to be used as fuel, in Districts I-IV or District V, a person must have imported such products into the respective districts during the calendar year 1957.

(2) To be eligible for an allocation of imports of residual fuel oil to be used as fuel in Districts I-IV or District V, a person must have imported residual fuel oil used as fuel into the respective districts during the calendar year 1957.

(3) To be eligible for an allocation of imports of finished products, other than residual fuel oil used as fuel, in Puerto Rico, a person must have imported such products into Puerto Rico during the last half of the calendar year 1958.

(4) To be eligible for an allocation of imports of residual fuel oil to be used as fuel in Puerto Rico, a person must have imported residual fuel oil used as fuel into Puerto Rico during the last half of the calendar year 1958.

(d) A person is not eligible for an allocation of crude oil and unfinished oils or finished products if the person is a subsidiary or affiliate owned or controlled, by reason of stock ownership or otherwise, by any other individual, corporation, firm or other business organization or legal entity who or which is eligible for a similar allocation.

**Sec. 5. Applications for import licenses for initial allocation periods; Districts I-IV, District V.**

(a) In order to receive a license to import crude oil and unfinished oils into Districts I-IV or into District V for the allocation period March 11, 1959, through June 30, 1959, or, in the case of finished

products, for the allocation period April 1, 1959 through June 30, 1959, a person should file with the Administrator, Oil Import Administration, Department of the Interior, Washington 25, D.C., before the close of business March 20, 1959, an application substantially in the following form (copies of which may be obtained from the Administrator):

**DISTRICTS I-V**

**APPLICATION FOR A LICENSE FOR THE IMPORTATION OF CRUDE OIL, UNFINISHED PETROLEUM OILS, AND PETROLEUM PRODUCTS**

TO: Administrator  
Oil Import Administration  
Department of the Interior  
Washington 25, D.C.

Name and Address of Applicant:

The above-named applicant makes application for a license to import.....

(Commodity or commodities)

in accordance with the applicable regulations, for the period ending June 30, 1959.

1. The applicant requests that the license be issued to provide for the importation of the below-named commodities at the U.S. Customs ports of entry indicated below:

Port or ports of entry	Commodity	Quantity (barrels adjusted to 60° F.)
a.....	.....	.....
b.....	.....	.....
c.....	.....	.....
d.....	.....	.....
e.....	.....	.....
f.....	.....	.....
g.....	.....	.....
h.....	.....	.....
i.....	.....	.....
j.....	.....	.....
k.....	.....	.....

2. The applicant certifies that:

(a) The applicant is not a subsidiary or affiliate owned or controlled, by reason of stock ownership or otherwise, by any other individual, corporation, firm or other business organization or legal entity, who or which is eligible for a license similar to the one applied for.

(b) No subsidiary or affiliate owned or controlled by the applicant by reason of stock ownership or otherwise has filed or will file an application for a similar license.

(c) This is the only application filed by the applicant for the period named above and is made for the applicant and on behalf of the following named subsidiaries and affiliates owned or controlled by the applicant by reason of stock ownership or otherwise:

- a.....
- b.....
- c.....
- d.....
- e.....

3. The applicant certifies that the crude oil and unfinished oils imported pursuant to this license will be processed in applicant's refinery or, if exchanges by the applicant are permissible under Oil Import Regulation 1, will be exchanged for domestic crude or unfinished oil which will then be processed in applicant's refinery.

4. The applicant certifies that applicant's average daily imports of finished products other than residual fuel oil used for fuel, as defined in Oil Import Regulation 1, for the calendar year 1957 were ..... barrels per day, adjusted to 60° F. (The quantity certified should not include free withdrawals of finished products as supplies for certain vessels or aircraft pursuant to section 309 of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1309, or withdrawals from bond for exportation pursuant to section 557 of that act—19 U.S.C., sec. 1557.)

5. The applicant certifies that applicant's average daily imports of residual fuel oil used for fuel, as defined in Oil Import Regulation 1, for the calendar year 1957 were ..... barrels per day, adjusted to 60° F. (The quantity certified should not include free withdrawals of finished products as supplies for certain vessels or aircraft pursuant to section 309 of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1309, or withdrawals from bond for exportation pursuant to section 557 of that act—19 U.S.C., sec. 1557.)

(Signature of applicant or authorized officer)

(Title)

(Date)

**NOTES**

1. Commodity descriptions must agree with the definitions contained in Oil Import Regulation 1.
2. In the event an import license is granted and licensee desires to utilize ports of entry other than those designated above, or to reschedule the quantities permitted to be imported at the several ports of entry, notice must be given to the Administrator, Oil Import Administration, as soon as practicable and in any event not later than five (5) days before the date a modified import license is desired.
3. Persons making false statements in connection with this application are subject to the penalties provided by law.

(b) In addition to the information called for on the application form set forth in paragraph (a) of this section, information with respect to refinery inputs in the respective districts during the calendar year 1958 must be filed by any applicant who applies for a license to

import crude oil and unfinished oils into the respective districts and who has not reported such refinery inputs to the Bureau of Mines, Department of the Interior, or who has not consented to the use and publication, as required, of such data by the Administrator. Such an

applicant must, therefore, in addition to filing an application in the form referred to, at the same time file with the Administrator a certification of the applicant's refinery inputs in the respective districts in average barrels per day for the calendar year 1958.

**Sec. 6. Applications for import licenses for initial allocation periods; Puerto Rico.**

(a) In order to receive a license to import crude oil and unfinished oils into Puerto Rico for the allocation period March 11, 1959 through June 30, 1959, or, in the case of finished products, for the allocation period April 1, 1959, through June 30, 1959, a person should file with the Administrator, Oil Import Administration, Department of the Interior, Washington 25, D.C., before the close of business March 20, 1959, an application substantially in the form set out in paragraph (a) of section 5 of this regulation except that under items 4 and 5 of the application form the applicant should certify as to applicant's imports into Puerto Rico for the last half of the calendar year 1958 (instead of for the calendar year 1957).

(b) In addition to the information called for on the application form set forth in section 5 of this regulation (with the changes mentioned in paragraph (a) of this section), information with respect to refinery inputs in Puerto Rico during the months of July, August, and September of the year 1958 must be filed by any applicant who applies for a license to import crude oil and unfinished oils into Puerto Rico and who has not reported such refinery inputs to the Bureau of Mines, Department of the Interior, or who has not consented to the use and publication, as required, of such data by the Administrator. Such an applicant must, therefore, in addition to filing an application in the form referred to, also at the same time file with the Administrator a certification of the applicant's refinery inputs in Puerto Rico in average barrels per day during the months of July, August, and September of the year 1958.

**Sec 7. Applications for the allocation period July 1, 1959 through December 31, 1959, and successive periods.**

With respect to the allocation period July 1, 1959, through December 31, 1959, and each successive allocation period thereafter, an application for allocations of imports of crude oil and unfinished oils or finished products must be filed with the Administrator, in such form as he may prescribe, not later than forty-five calendar days prior to the beginning of the allocation period for which the allocation is required.

**Sect. 8. Licenses.**

(a) When an allocation has been made to a person under this regulation, the Administrator shall, upon application in such form as he may prescribe, issue a license or licenses based on the allocation, specifying the amount of crude oil and unfinished oils or finished products which may be imported, the period of time such license shall be in effect, and the port or ports of entry

through which the importation may be made. The Administrator shall also send a copy of such license or licenses to the Collector of Customs, at the respective ports of entry stated in the license or licenses. The Administrator may amend such licenses.

(b) No license issued pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 9. Determination of quantities available for allocation; Districts I-IV, District V.**

(a) Except with respect to the allocation period March 11, 1959, through June 30, 1959, prior to the beginning of each allocation period the Administrator shall determine in accordance with the limitations imposed by section 2 of Proclamation 3279 the quantities of imports of crude oil and unfinished oils which are available for allocation in Districts I-IV and in District V, respectively, and the quantities of imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel which are available for allocation in such districts. The Administrator shall make such a determination for the allocation period March 11, 1959, through June 30, 1959, as promptly as possible.

(b) After each such determination the Administrator shall as provided by these regulations make allocations to eligible applicants for the appropriate allocation period.

**Sec. 10. Allocations of crude oil and unfinished oils; Districts I-IV.**

(a) The quantity of imports of crude oil and unfinished oils determined to be available for allocation in Districts I-IV for the allocation period March 11, 1959, through June 30, 1959, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the calendar year ending December 31, 1958, and computed according to the following schedule:

Average B/D input:	Percent of input
0-10,000.....	12
10-20,000.....	11
20-30,000.....	10
30-60,000.....	9
60-100,000.....	8
100-150,000.....	7
150-200,000.....	6
200-300,000.....	5
300 plus.....	4

(c) If an eligible applicant has been importing crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 80 percent of the applicant's last allocation under the Voluntary Oil Import Program, the applicant shall nevertheless receive an allocation under this section equal to 80 percent of his last allocation under the Voluntary Oil Import Program.

(d) No allocation made pursuant to this section shall entitle a person to a license which will allow the importation

of unfinished oils in excess of 10 percent of the allocation.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 11. Allocations of crude oil and unfinished oils; District V.**

(a) The quantity of imports of crude oil and unfinished oils determined to be available for allocation in District V for the allocation period March 11, 1959, through June 30, 1959, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the calendar year ending December 31, 1958, and computed according to the following schedule:

Average B/D input:	Percent of input
0-10,000.....	25
10-20,000.....	20
20-30,000.....	15
30-60,000.....	10
60-100,000.....	9
100-150,000.....	8
150-200,000.....	8
200 plus.....	6

(c) If an eligible applicant has been importing crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 80 percent of the applicant's last allocation under the Voluntary Oil Import Program, the applicant shall nevertheless receive an allocation under this section equal to 80 percent of his last allocation under the Voluntary Oil Import Program.

(d) No allocation made pursuant to this section shall entitle a person to a license which will allow the importation of unfinished oils in excess of 10 percent of the allocation.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 12. Allocations of crude oil because of inability to procure domestic crude oil by ordinary and continuous means.**

(a) The Administrator may make a special allocation of imports of crude oil to any person having operating refinery capacity or having pipeline facilities using crude oil directly as fuel who, to the satisfaction of the Administrator, shows inability to obtain quantities of domestic crude oil by ordinary and continuous means, such as barges, pipelines, or tankers, sufficient to meet his minimum requirements. Such a special allocation shall be no larger than is required to meet the person's minimum requirements. A person who receives an allocation under this section shall not be entitled to an allocation under section 10 or section 11 of this regulation.

(b) An application for an allocation under this section must be made in writing to the Administrator and must explain the applicant's situation in detail. The Administrator may require an applicant to furnish additional information

and may require that a hearing be held upon the application.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 13. Allocations of finished products; Districts I-IV, District V.**

(a) The quantity of imports of finished products determined to be available for allocation in Districts I-IV and in District V for any particular allocation period shall be allocated by the Administrator to each eligible applicant in the proportion that the applicant's imports of finished products during the calendar year 1957 bore to the imports of such products during that year by all eligible applicants. Separate allocations shall be made for imports of residual fuel oil to be used as fuel and for imports of finished products other than residual fuel oil to be used as fuel.

(b) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 14. Determination of maximum level of imports; Puerto Rico.**

(a) Pursuant to section 2 of Proclamation 3279, it is determined (1) that the average barrels per day of imports of crude oil and unfinished oils into Puerto Rico during any particular allocation period shall not exceed the average barrels per day, as determined by the Administrator, during the months of July, August, and September of the year 1958 of imports of such commodities into Puerto Rico, and (2) that the average barrels per day, as determined by the Administrator, of imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel into Puerto Rico during any particular allocation period shall not exceed the average barrels per day of imports of such products, respectively, into Puerto Rico during the last half of the calendar year 1958.

(b) The Administrator shall from time to time review the determinations set forth in paragraph (a) of this section and shall recommend to the Secretary of the Interior that the level of imports be increased or decreased as may be required to meet increases or decreases in local demand in Puerto Rico or in demand for export to foreign areas.

**Sec. 15. Allocation of crude oil and unfinished oils; Puerto Rico.**

(a) For the allocation period March 11, 1959 through June 30, 1959, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico quantities of imports of crude oil and unfinished oils equal to the applicant's average barrels daily of refinery input (adjusted by the Administrator for downtime) in Puerto Rico during the months of July, August, and September of the year 1958.

(b) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

**Sec. 16. Allocations of finished products; Puerto Rico.**

(a) For the allocation period March 11, 1959 through June 30, 1959, the Ad-

ministrator shall allocate to each eligible applicant for an allocation for Puerto Rico a quantity of imports of finished products equal to the applicant's average barrels daily of imports of such products during the last half of the calendar year 1958. Separate allocations shall be made for imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel.

(b) No allocation made pursuant to this section may be sold, assigned or otherwise transferred.

**Sec. 17. Use of imported crude oil and unfinished oils.**

(a) Each person who imports crude oil or unfinished oils under a license issued pursuant to an allocation made under sections 10, 11, or 15 of this regulation must process the oils so imported in his own refinery, except that such oils may be exchanged in kind for domestic crude oil or unfinished oils for processing in such refinery if:

(1) The exchange is not otherwise unlawful;

(2) The exchange is effected on a current basis—that is, not more than ninety days elapse between the delivery of foreign and domestic oil under the exchange agreement; and

(3) The proposed exchange agreement is reported to the Administrator before it is acted upon.

(b) Each person who imports crude oil under a license issued pursuant to an allocation made under section 12 of this regulation must process the oil in his own refinery or use it directly as fuel in his pipeline facility.

**Sec. 18. Reports.**

Each person who imports crude oil, unfinished oils, or finished products under a license issued under this regulation shall report to the Administrator the quantities in barrels corrected to 60° F. of crude oil, unfinished oils, and finished products so imported. Each report shall state through which port of entry the importation was made and shall specify the kinds of unfinished oils and finished products imported. Each report should be filed with the Administrator within fifteen days of the end of a particular month.

**Sec. 19. False statements.**

Persons concealing material facts or making false statements in or in connection with any applications, or reports filed with the Administrator or in connection with any license presented to or statements made to a Collector of Customs with respect to imports of crude oils, unfinished oils, or finished products, is guilty of a crime and upon conviction may be punished by fine or imprisonment or both.

**Sec. 20. Revocation or suspension of allocations or licenses.**

The Administrator may, after a hearing, revoke or suspend any allocation or license issued under this regulation, on grounds relating to the national security, or the violation of the terms of Proclamation 3279, this regulation, or licenses issued pursuant thereto.

**Sec. 21. Appeals.**

(a) There is hereby established an Oil Import Appeals Board, comprised of one representative each from the Departments of Commerce, Defense, and Interior, designated, respectively, by the Secretaries of such Departments. The Board shall elect a Chairman from its own membership.

(b) The Appeals Board shall hear and consider petitions and appeals by persons affected by this regulation and may, on grounds of hardship, error, or other relevant special consideration, but within the limits of the maximum levels of imports established in section 2 of Proclamation 3279:

(1) Modify any allocation made to any person under this regulation;

(2) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under this regulation; and

(3) Review the revocation or suspension of any allocation or license.

The decisions of the Appeals Board on petitions and appeals shall be final.

(c) All petitions and appeals to the Appeals Board seeking relief from a decision of the Administrator shall be filed with the Administrator not later than seven days following the announcement of said decision.

(d) The Appeals Board may adopt, promulgate, and publish such rules of procedure as it deems necessary for the conduct of its hearings.

**Sec. 22. Definitions.**

As used in this regulation:

(a) "Person" includes an individual, a corporation, firm, or other business organization or legal entity, and an agency of a state, territorial, or local government, but does not include a department, establishment, or agency of the United States;

(b) "Districts I-IV" means the District of Columbia and all of the States of the United States except those States within District V;

(c) "District V" means the States of Arizona, Nevada, California, Oregon, Washington, Alaska, and the Territory of Hawaii;

(d) "Crude oil" means crude petroleum as it is produced at the wellhead;

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

(1) Liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

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

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

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

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

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

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

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

(f) "Unfinished oils" means one or more of the petroleum oils listed in paragraph (e) of this section, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means;

(g) "Administrator" means Administrator, Oil Import Administration, Department of the Interior, or his duly authorized representative;

(h) The words, "importation," "importing," "import," "imports," and "imported," include both entry for consumption and withdrawal from warehouse for consumption;

(i) "Refinery inputs" include all crude oil, imported unfinished oils, natural gasoline mixed in crude oil, and plant and field condensates mixed in crude oil, which are further processed, other than by blending by mechanical means, but do not include unfinished oils which have not been imported;

(j) "Refinery capacity" means a plant which, by further processing crude oil

or unfinished oils, other than by blending by mechanical means, manufactures finished petroleum products.

Proclamation 3279, "Adjusting Imports of Petroleum and Petroleum Products Into the United States," (24 F.R. 1781) has been issued in the interests of the national security. The Proclamation was issued on March 10, 1959. In order fully to implement the Proclamation, it is essential that this regulation become effective immediately. It would, therefore, be impracticable and contrary to the public interest to give notice of proposed rulemaking or to delay the effective date of the regulation. Accordingly, this regulation shall become effective immediately.

FRED A. SEATON,  
Secretary of the Interior.

MARCH 13, 1959.

[F.R. Doc. 59-2324; Filed, Mar. 13, 1959; 5:14 p.m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF THE TREASURY

Internal Revenue Service  
[ 26 CFR (1954) Part 1 ]

**INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953**

#### Notice of Proposed Rule Making

##### Correction

In F.R. Document 59-2102, appearing in the issue for Thursday, March 12, 1959, at page 1793, make the following changes:

1. Last two sentences of paragraph (d) of § 1.1371-1 should be deleted, and the following two sentences should be substituted therefor: "However, if stock is owned by a trust which is subject to the provisions of subchapter J of chapter 1 of the Code or by a voting trust, the trust is considered the shareholder even though the dividends paid to the trust are includible directly in the income of the grantor or some other person. If stock is owned by a partnership, such partnership and not its partners is considered to be the shareholder."

2. Second sentence of paragraph (e) of § 1.1371-1 should be changed to read: "The word 'trust' as used in this paragraph includes all trusts subject to the provisions of subchapter J of chapter 1 of the Code (including subpart E thereof) and voting trusts."

3. Subparagraph (1) of paragraph (c) of § 1.1372-1 should be changed to read:

(1) In general, except as otherwise provided in section 1373(d), taxable income of an electing small business corporation is computed in the same manner that it would have been had no election been made.

4. The reference to section 1372(a) (5) appearing in the first and fifth sentences

of subdivision (iv) of § 1.1372-4(b) (5) should be changed to section 1372(e) (5).

5. Subdivision (vi) of § 1.1372-4(b) (5) should be changed by deleting the words "includible in gross income".

6. Parenthetical material appearing in the first sentence of paragraph (c) of § 1.1375-1 should be changed to read: "(including amounts treated as dividends under section 1373(b))".

7. The example appearing under paragraph (c) of § 1.1375-3 should be changed to read as follows:

*Example.* The stock of an electing small business corporation is owned 50 percent by F and 50 percent by S, a minor son of F. For the taxable year the corporation has \$70,000 of taxable income and earnings and profits. During the year the corporation distributes dividends (including amounts treated as dividends under section 1373(b)) of \$35,000 to F and \$35,000 to S. Compensation of \$10,000 is paid by the corporation to F for services rendered during the year, and no compensation is paid to S, who rendered no services. Based on the relevant facts, a reasonable compensation for the services rendered by F would be \$30,000. In the discretion of the district director, up to \$10,000 of the \$35,000 dividend received by S may, for tax purposes, be allocated to F.

in Washington, D.C., on the 10th day of March A.D. 1959.

The matter of inspection and maintenance of motor vehicles used in the transportation of migrant workers under Part 198 of the Motor Carrier Safety Regulations prescribed by order dated June 17, 1957, being under consideration; and

It appearing, that the public safety may warrant authorizing certain employees of this Commission to declare and mark "Out of Service" any motor vehicle used in the transportation of migrant workers which, by reason of its mechanical condition, is so imminently hazardous to operate as to be likely to cause an accident or a breakdown, and good cause appearing therefor;

It is ordered, That pursuant to section 4(a) of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1003) notice is hereby given of the Commission's proposal to amend Part 198 "Transportation of migrant workers" of the Motor Carrier Safety Regulations adopted June 17, 1957, (49 CFR Part 198) (Authority: 49 Stat. 546, as amended; 49 U.S.C. 304) by adding the following rule:

#### § 198.8 Motor vehicles declared "Out of Service"

No motor carrier shall permit or require a driver to drive nor shall any driver drive any motor vehicle which by reason of its mechanical condition is so imminently hazardous to operate as to be likely to cause an accident or a breakdown and which motor vehicle, because of such condition, has been declared and marked "out of service" with the prescribed sticker<sup>1</sup> by a specifically authorized employee of this Commission. Such motor vehicle shall not be operated until the repairs required by the "out of service notice" on Form BMC 63<sup>1</sup> have been satisfactorily completed and the "out of

### INTERSTATE COMMERCE COMMISSION

[ 49 CFR Part 198 ]

[Ex Parte No. MC-40]

#### TRANSPORTATION OF MIGRANT WORKERS

#### Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment

At a general session of the Interstate Commerce Commission, held at its office

<sup>1</sup> Filed as part of the original document.

service" sticker removed. No person shall remove the "out of service" sticker from such motor vehicle prior to the completion of the required repairs. When the repairs have been made, the carrier shall so certify to the Commission on Form BMC 63, in accordance with the terms prescribed thereon.

[F.R. Doc. 59-2247; Filed, Mar. 16, 1959; 8:47 a.m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[ 7 CFR Parts 904, 934, 996, 999 ]

[Docket Nos. AO-14-A27; AO-83-A23;

AO-203-A10; AO-204-A9]

### MILK IN GREATER BOSTON, MERRIMACK VALLEY, SPRINGFIELD, AND WORCESTER, MASSACHUSETTS, MARKETING AREAS

#### Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amendments to the Tentative Marketing Agreements and to the Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Greater Boston, Merrimack Valley, Springfield, and Worcester, Massachusetts, marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 4th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

**Preliminary statement.** The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, were formulated, was conducted at Boston, Massachusetts, on February 18-19, 1959, pursuant to notice thereof which was issued February 4, 1959 (24 F.R. 978).

The material issues on the record of hearing relate to:

1. Revision of the "plant" and "receiving plant" definitions to provide greater specificity to such definitions as they relate to "reload" points.

2. Revision of the "dairy farmer", "dairy farmer for other markets", "producer", "milk", and "pool milk" definitions and the inclusion of a "diverted milk" definition to accommodate the efficiencies present in bulk tank milk

handling and to alleviate administrative problems.

3. Revision of the assignment provisions with reference to movements of packaged fluid milk products from other Federal order markets into the Greater Boston, Merrimack Valley, Springfield, and Worcester, Massachusetts, marketing areas.

4. Revision of the classification provisions as they relate to bulk milk movements to plants under the Southeastern New England and Connecticut orders.

**Findings and conclusions.** The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. **Revision of the plant and receiving plant definitions.** The "plant" and "receiving plant" definitions should be revised to provide greater specificity to such definitions as they relate to points at which milk is transferred from tank pickup truck to other vehicles. The present definitions are essentially tailored to conditions of delivery in cans and in large measure necessitate a determination, primarily by interpretation, as to whether bulk handling facilities meet the requirements. The only specific guide with respect to a receiving plant which the market administrator has is the requirement that weight sheets or other records of the individual farmer's deliveries be maintained on the premises.

The New England Milkshed Price Committee, constituted by representation of producer and handler interests and dairy marketing experts from the several New England colleges has devoted considerable study to problems related to bulk milk handling. Bulk tank handling provides a flexibility in the handling and movement of milk not possible under former can handling methods and bulk handling may result in the eventual disappearance of extensive facilities which in the past have constituted country receiving plants. During the last three years, 17 country plants in the upcountry production area have closed, of which 12 were the direct result of conversion to bulk tank handling. This trend can reasonably be expected to continue in the future at an accelerated rate.

Some can receiving plants have been replaced by reload points where milk is assembled and transferred from farm tank pickup trucks to over-the-road tankers or railroad cars for subsequent movement to its final destination. The facilities constituting these "reload points" are varied and range all the way from roadside transfer to structures not significantly different from the can receiving plant as traditionally constituted.

The committee took the position that because of the geographical structure of the New England milkshed and the great distances separating the production area from the city markets it is highly desirable that milk continue to be priced as near the farm as practicable. They pointed out that in most situations reloading to over-the-road tankers would necessarily take place in the process of moving milk to city markets and argued

that such reload points, when of sufficiently substantial nature, represented appropriate points of pricing. They further suggested that pricing of bulk milk f.o.b. market, which would otherwise be the case if reload points were not recognized, involved an entirely new approach to the traditional method of pricing milk in New England. Handlers and producers alike are familiar with a basic price quoted in the area of production. Consequently, f.o.b. market pricing would be an unfamiliar innovation, and would be a source of confusion to producers.

It is not intended that the application of an order provision should encourage or discourage the development of bulk tank handling. It is essential, however, that some more specific standards be provided to establish point of pricing and pooling for milk handled by bulk tank. As previously indicated, the point of pricing under the present order provisions is largely related to the place where the individual weight sheets and records are kept. The committee appropriately concluded that this was a thin thread on which to determine point of pricing, recognizing that such records, in the case of bulk milk, may be carried on the pickup truck or retained until the end of the week in the home of the trucker and then forwarded to the handler responsible for the milk. In such cases, under the present terms of the order, the milk involved would necessarily be priced at the location of the plant where it was ultimately disposed of.

The standards recommended by the committee and herein proposed to be adopted would, in most instances, retain as points of pricing the same locations applicable under the present order provisions. They do, however, provide more specific standards which the market administrator may apply in the case of newly developed reload points. There appear to have been no serious problems, other than administrative, which have developed under the present definitions. The proposed definitions make clear that a reload facility to qualify as a point of pricing, must consist of land and buildings with facilities and equipment for handling or processing milk, operated exclusively by an individual or individuals engaged in receiving milk for resale or manufacture and that the washing and sanitizing of trucks must be done on the premises. Such conditions require an operation of sufficient magnitude to presume financial responsibility on the part of the operator and in this regard are similar to the present provisions. The washing and sanitizing of trucks on the premises replaces the requirement for maintenance of records. The committee argued that while presently no specific standards have been established by the responsible health authorities governing reload points, it was the committee's conviction that standards would shortly be established, requiring at least the facilities herein recommended.

In several instances haulers who assemble bulk tank milk for delivery to a handler's plant have found it convenient to operate some form of transfer facili-

ties in the country for the transfer of milk from farm pickup tank to larger over-the-road tankers. Under the present order provisions no serious problems have yet arisen since the extent of such facilities has not been such as to qualify them as receiving plants. Nevertheless, in the future, particularly if standards are laid down by the health authorities, it is entirely possible that reload facilities operated by haulers would meet the present requirements. These haulers are not dealers or handlers in the sense of buying or selling milk, but are merely engaged in performing transportation service. It would not be desirable to consider such operations as constituting a "plant" or "receiving plant" since the incidence of regulation would then fall on haulers rather than handlers who actually purchase the milk. The proposed "plant" definition would except such facilities since they would not be operated by a person "engaged in the business of receiving fluid milk products for resale or manufacture".

It is not clear that the washing and sanitizing function as proposed, and as herein recommended, as an essential requirement for receiving plant status will materially implement an appropriate determination of point of pricing. In the same manner that a handler may now alter the intended point of pricing by the manner in which he handles his records, he may continue to do so by the method and location used in washing his trucks. Hence it seems likely, except in the matter of relieving the market administrator of the responsibility of determining the temporary depository for any handlers' records, that the recommended provisions will result essentially in little or no change in the matter related to point of pricing. It will accommodate handlers, however, by relieving them of the necessity of maintaining at reload points records which more logically might be retained elsewhere.

The changes in "plant" and "receiving plant" definitions herein recommended will tend to alleviate problems thus far encountered in determination of appropriate pricing and pooling points for bulk tank milk. A number of questions were raised at the hearing intended to bring out hypothetical adjustments that individual handlers could make in their bulk handling operations which might result in pricing inequities as between handlers. Such developments have not occurred and there is no reason to presume at this time that they would have the implied result. The record of this hearing does not support further changes in the basic matter of point of pricing. Should future problems arise in matters relating to bulk tank handling under the order, they should appropriately be considered at a future hearing.

2. *Revision of other definitions.* The several orders should be amended by revision of the "dairy farmer", "dairy farmer for other markets", "producer", "milk" and "pool milk" definitions and the addition of a definition for "diverted milk" to alleviate administrative problems encountered under bulk tank handling and to permit handlers to take full advantage of the greater flexibilities

of milk movements associated with such handling. These changes are necessary to identify more specifically those dairy farmers who are regular suppliers of the market and whose milk is entitled to participate in one of the respective pools.

The present "dairy farmer" definition refers to delivery of bulk milk to a plant. The former concept of "bulk" milk was milk other than in packaged form. As now generally used it refers to milk moved via bulk tank as contrasted to cans. In order that there can be no question of meaning it is appropriate that the reference to bulk milk be deleted.

The present definition employs the concept of a dairy farmer delivering his milk to a plant. Provisions later discussed are intended to make clear that once milk is picked up at the farm the purchasing handler is held responsible for the accounting of the milk. In recognition of this change in the application of regulation, the "dairy farmer" definition should be further revised to include "any person who produces milk which is moved from his farm to a plant other than as packaged milk".

The present "dairy farmer for other markets" definition, among other things, includes any dairy farmer whose milk was purchased by a dealer who operated both a regulated and unregulated plant if such dealer caused milk from the same farm to move as nonpool milk to an unregulated plant during the same month. This provision was intended to preclude a multiple plant handler from withdrawing milk of individual producers from the pool on certain days during the month when there was a Class I outlet in an outside market and returning it to the pool when such outlet was no longer available. With the flexibilities inherent in bulk tank milk handling, single plant handlers now have much the same opportunities as multiple plant operators to move milk in and out of the pool. In the interest of orderly marketing, it is not appropriate that handlers have the opportunity to keep outside market Class I sales out of the pool, with the privilege of pooling milk on those days when such outside sales are not available. The proposed modification would extend the same prohibition to single and multiple plant handlers, who might divert milk to a nonpool plant, and seek to withhold the Class I sale from the pool. A handler must decide on a month-to-month basis whether he desires to pool the milk of individual dairy farmers for the month. Other provisions of this definition, in which no changes were proposed, preclude the pooling during the flush months of any individual dairy farmer's milk if the handler received nonpool milk from the same farm during any month of the short season. Hence, the decision of a handler not to pool the milk of a particular dairy farmer during certain months will preclude such dairy farmer from qualifying as a producer during the flush months.

Milk received at a pool plant as diverted milk from another Federal order plant should not be considered as milk from a "dairy farmer for other markets"

if such diverted milk is considered producer milk under the other Federal order. Such milk would be classified and priced under the other Federal order and the provisions of the respective orders specifically prescribe the treatment of milk moving between regulated markets. A handler should not, however, have opportunity to split a dairy farmer's milk between regulated markets, moving it as producer milk to one market for Class I use part of the month and to another market, also as producer milk, for Class II disposition the remainder of the month. Such procedure would result in an undesirable relationship between markets in that one market would receive the Class I sales and another market would carry the burden of the surplus associated with the Class I sales. Under the proposed definitions such a disposition would cause the respective receipts in each market to be considered as milk from "dairy farmers for other markets". This is an application of the so called "all or none" rule, to the effect that a handler should be required to decide, on a month-to-month basis, in which pool he desires to pool the milk of individual dairy farmers and hence which pool will carry both the Class I sales and surplus associated with such sales.

There are only limited manufacturing facilities available for processing the necessary surplus in the Southeastern New England market. It is reasonable to expect that the milk in that area, which is not needed for Class I and related uses may be diverted to regulated plants under other New England orders for manufacturing during part of the months. Such milk is surplus to its normal market and it would be inappropriate to permit it producer status in the market to which diverted, even though the diverting handler did not report it as diverted milk, and hence producer milk, in the originating market. Under such circumstances the milk should be considered as milk from "dairy farmers for other markets" and the definition herein proposed so provides. While Southeastern New England is used as an example, similar movement between these orders should be accorded the same treatment.

Another minor change in the "dairy farmer for other markets" definition involves clarification of the meaning of the terms "handler" and "dealer" as used in this definition. No substantive change is intended. However, the language should be clear that a handler or dealer is held responsible under the order for acts performed by a person other than himself when such person is an affiliate of, or is controlled by or controls such handler or dealer and he cannot avoid responsibility for such acts through the media of separate corporate entities.

The "producer" definition should be modified to embrace the concept of milk "moved from a farm" to a plant rather than "delivered to a plant", for reasons previously set forth under the discussion of "dairy farmer". The definition as presently provided excepts a "dairy farmer for other markets", a dairy farmer with respect to exempt milk delivered, and a producer handler. These

exceptions are retained. In addition it is desirable to except also dairy farmers who are producers under another Federal order. As stated in the discussion of "dairy farmer for other markets" a dairy farmer should not be permitted to hold producer status under two orders for milk originating from the same farm during any month and purchased by the same handler. The definition herein recommended will preserve this principle and prevent any conflict in application of the provisions of the several orders.

The present producer definition recognizes diversions from the usual plant of receipt to other plants and it is intended that the privilege of diversion shall be preserved with some modification. With the greater flexibility of movement under the bulk handling somewhat greater freedom of diversion is desirable. Clarity and brevity of the order provisions will be accommodated if a definition of diverted milk is provided. The present producer definition contains the term "ordinarily" delivered. By interpretation this has been deemed to mean more than half the time in the 12 months ending with the current month. The recommended definition of diverted milk, with certain exceptions, would recognize diversions only when the milk had moved to the plant of usual receipt on more than half of the delivery days in the 12-month period ending with the current month in which milk was moved from the producer's farm to the handler.

As can handling is replaced by bulk handling, plants may be closed or milk may be associated with plants at different locations. In addition, as bulk tank routes are organized, new producers may be picked up on trucks predominantly hauling milk of established producers being diverted to a plant other than the plant of normal receipt. Unless these situations are recognized established producers may lose their status or handlers will be forced to make uneconomic milk movements to assure producer status for individual dairy farmers. The order provisions should limit the ability of a handler to take full advantage of the evolution of milk handling only to the extent necessary to establish clearly the identity of milk, establish its association with the market, and to protect the integrity of regulation.

The proposed diversion provisions would permit a handler to add new producers to a diverted load if the majority of dairy farmers whose milk was included in the load had producer status. This will permit economic development of new bulk tank routes, provide equitable treatment of new producers, and assure the continued integrity of regulation. The provision would also provide a "fresh start" for producers shifting from can to bulk tank delivering. Irrespective of what status a dairy farmer had under can operation, if his bulk tank milk were eligible for pooling if received at a pool plant, it could be diverted under the concept of normal delivery. That is, once a dairy farmer had associated his bulk operation with a pool plant his milk would be eligible for diversion if deliv-

ered to the pool plant the majority of the time.

The "milk" and "pool milk" definitions should be revised, in conjunction with revision of the dairy farmer definition previously discussed to make clear that the purchasing handler is held responsible for accounting for the milk once it is picked up at the farm and commingled with milk of other dairy farmers in the tank truck. The receipt of milk at a plant would no longer be necessary to provide "pool milk" status for milk received in tank trucks. Even though milk might never reach a plant, the responsible handler should be held accountable for milk which he caused to be accepted, measured, sampled, and transferred into the tank truck at the farm. Discrepancies which might occur from time to time between the weight or butterfat test when received at the farm and the weight or test at the plant should be treated as shrinkage for which the handler would be responsible.

3. *Revision of the assignment provisions with reference to movements of packaged fluid milk products from other Federal order markets into the Boston, Merrimack Valley, Springfield and Worcester, marketing areas.* The Boston and three secondary market orders should be amended to provide that fluid milk products, other than cream, moved in packaged form from a fully regulated plant under another Federal order to a regulated plant under one of these orders, or sold directly to consumers in a marketing area regulated under one of these orders, shall be assigned to Class I milk and credited to the market from which it originates.

These orders presently give recognition to packaged fluid milk products moving between the four markets and credit Class I utilization to the originating market. They also provide a Class I classification during the months of August through March for any receipts at a regulated plant from Order No. 27 pool plants which are classified and priced in Class I-A or I-B under that order. In all other circumstances, packaged fluid milk products received at a regulated plant from any unregulated plant are assigned to Class II. Any handler operating an unregulated plant from which nonpool milk is disposed of directly to consumers in one of these marketing areas is required to make compensatory payment on the milk so disposed of which is in excess of his purchases of pool milk. Hence, with the one exception under specified circumstances, of milk from Order No. 27, each pool is credited with any packaged movements into its area from plants not regulated under one or another of these orders.

Federal orders generally are so constructed as to permit free movement of milk between markets. If a handler in one regulated market extends his operations and disposes of packaged fluid milk products in another regulated market such sales should be considered as a part of the fluid milk sales credited to producers in the market where the handler is regulated.

To permit unrestricted competition for sales among handlers, all of whose milk is priced and regulated on a uniform basis, full reciprocity in the movement of packaged milk as between regulated plants of different markets and on sales directly to consumers in another marketing area should be provided. Producers in the originating market supply the milk so disposed of and also carry the necessary surplus associated therewith. It is appropriate, therefore, that they receive credit for such Class I sales.

Adoption of this proposal will permit regulated handlers in the Southeastern New England and Connecticut markets to make direct distribution into these four marketing areas and such Class I sales will be credited to the originating market. Hence, all regulated handlers under the several New England orders will compete on an equal basis for Class I sales in any of these regulated areas. While it is unlikely that handlers in any other federally regulated markets would dispose of packaged fluid milk products in the marketing area covered by these orders; nevertheless, there is no reason why such movements, if they occur, should not receive the same treatment accorded movements between the New England markets. Some exception, however, must be provided in the case of movements, from Order No. 27 pool plants since it is possible that such milk is not priced under that order. Assignment to Class I of receipts of packaged fluid milk products from Order No. 27 plants, and the waiving of compensatory payments on direct disposition from such plants to consumers in the marketing areas is therefore limited to milk which is classified and priced as Class I-A or I-B under that order.

4. *Revision of the classification provisions with reference to movements of bulk milk to plants under the Southeastern New England and Connecticut orders.* No change should be made in the classification provisions of the Boston, Merrimack Valley, Springfield and Worcester orders as they relate to the classification of bulk movements of fluid milk products to plants regulated under the Southeastern New England or Connecticut orders. Under the present provisions of the orders proposed to be amended milk so moved is classified as Class I milk. However, in the transferee market it is assigned to the lowest remaining utilization at the transferee plant after the prior assignment of receipts of nonfederally regulated other source milk and specified percentages of receipts of producer milk to the lowest available use class. The application of the present provisions of the respective orders, under certain circumstances, will require a Class I classification on bulk movements in the originating market and a Class II classification in the transferee market. Proponents argued that there should be compatibility of classification and assignment of bulk movement between Federal order markets and accordingly, they proposed that the Boston and three secondary market order provisions be changed to permit the classification of bulk movements from

those markets into the Southeastern and Connecticut markets in the class in which assignment under the provision of the orders regulating these latter markets is required.

The Southeastern New England and Connecticut markets are large markets and it is expected that in general, they will maintain adequate reserve supplies to fulfill all of their Class I needs. However, during the months of July, August and September there is a very substantial influx of population, much of it from the Boston area, into the resort areas of the Southeastern New England marketing area, which substantially increases the fluid needs of that area during such months. It would be uneconomic for Southeastern handlers to maintain a year-round reserve supply to cover the increased milk sales during this limited vacation season. More logically such sales should accrue to the Boston and secondary market pools which largely supply the milk needs of these vacationers during the remaining nine months of the year. Accordingly, the provisions of the Southeastern New England order provide for the assignment of 15 percent of producer receipts to Class II prior to the assignment of other Federal order bulk fluid receipts to the remaining lowest use classification during the months of July, August and September. This procedure is expected to result in a Class I classification of any necessary bulk milk movements from other markets during these months. Hence, the problem of noncompatibility of classification and assignment on necessary bulk transfers from Boston or the three secondary market areas during the months of July through September is unlikely to occur. A similar analysis would be applicable in regard to the Connecticut area, for the period of July through October.

During the months of the year other than July, August and September, it is expected that the Southeastern and Connecticut producers will maintain at least an adequate supply to fulfill the fluid milk requirements of these respective markets. While a provision is contained in the Southeastern order for the assignment in months other than July, August and September of 5 percent of producer milk to Class II prior to the assignment of receipts of other Federal order milk, this provision was not intended to provide any handler, who chooses to buy part of his supply from the Boston or secondary market pools, assurance that such purchases would be assigned to Class I. It would be uneconomic to encourage movement of milk from Boston plants for Class I use when adequate local supplies were available for Class I use. While it is true that such movements, under certain circumstances, might promote equalization of blends as between markets; nevertheless, local producers who are regular producers for the Southeastern market should not be expected to take a Class II classification on their available supplies while outside markets are credited with the market Class I utilization. In any event, the provisions of the Southeastern or Connecticut orders were not an issue at this

hearing and their appropriateness can be ascertained only on the basis of operating experience over an extended period of time.

It is possible that during certain months of the year purchases by Connecticut or Southeastern handlers from the Boston or secondary markets, assigned to Class I under these orders, may be assigned in the main to Class II in the transferee market. This situation, however, is expected to encourage the use of available local milk in preference to milk from other markets. The proposed order change, while permitting freedom of choice of supply, at no apparent cost advantage, could result in the Boston and three secondary markets carrying the burden of the Class II utilization, including the necessary market reserves, of the Southeastern New England and Connecticut markets with only a minimum opportunity to share in the Class I sales. Producers in the transferee markets thus would be assured of a blended price near the Class I price, while blended prices in the transferor markets would be depressed.

It is essential, in the interest of orderly marketing that the blended prices as between the several New England markets be maintained in close alignment. While there is opportunity through the shifting of plants as between orders and the transfer of packaged sales as between markets to counter balance any disparities in blended prices which might result from application of the proposed amendment, nevertheless, the same interests are not necessarily involved and decisions on such matter must be more or less on a long range basis. It is concluded therefore, that the proposed amendment should not be adopted.

Other recommended changes are of minor nature to secure conformity of the proposed amended provisions with other provisions of the orders or to modernize obsolete name references.

*Rulings on proposed findings and conclusions.* Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the markets. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions set forth in the briefs are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

*General findings.* (a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices

as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in the marketing agreements upon which a hearing has been held.

*Recommended marketing agreements and orders amending the orders.* The following orders amending the orders regulating the handling of milk in the Greater Boston, Merrimack Valley, Springfield and Worcester, Massachusetts, marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the respective orders as hereby proposed to be amended.

Greater Boston order:

§ 904.2 [Amendment]

1. Delete paragraphs (c), (d) (2) and (4), and (e) of § 904.2 and substitute therefor the following:

(c) "Dairy farmer" means any person who produces milk which is moved from his farm to a plant other than as packaged milk.

(d) \* \* \*

(2) Any dairy farmer with respect to milk which is purchased from him by a handler and moved to a regulated plant, if that handler caused milk from the same farm to be moved as nonpool milk to an unregulated plant during the same month, except that the term shall not apply to any dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

(4) For purposes of this paragraph, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by such handler or dealer.

(e) "Producer" means any dairy farmer whose milk is moved from his farm to a pool plant, or to any other plant as diverted milk; except that the term shall not include a producer-handler, a dairy farmer for other markets, a dairy farmer with respect to exempt milk delivered, nor a dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

§ 904.3 [Amendment]

2. Delete paragraphs (a) and (d) of § 904.3 and substitute therefor the following:

(a) "Plant" means the land and buildings, or separate portion thereof, together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more per-

sons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products.

(d) "Receiving plant" means any plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled; or to which milk is moved from dairy farmers' farms in tank trucks and is there transferred to stationary equipment in the building or to other vehicles.

#### § 904.4 [Amendment]

3.a. Delete paragraphs (a), (f), (g) (2) and (3) of § 904.4 and substitute therefor the following:

(a) "Milk" means the commodity received from a dairy farmer as cows' milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity by weight of "half and half".

(f) "Pool milk" means milk which a handler has received as milk from producers, and all fluid milk products derived from milk as received. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at a plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month, and such milk shall be considered as received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month.

(g) \* \* \*

(2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant, up to the total quantity of nonpool milk received at the unregulated plant; except exempt milk, emergency milk, receipts from New York-New Jersey order pool plants which are assigned to Class I milk pursuant to § 904.27, and receipts of packaged fluid milk products from a regulated plant under any other Federal order;

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a New York-New Jersey order pool plant at which such milk was classified and priced as Class I-A or I-B or a regulated plant under any other Federal order, without its intermediate movement to another plant.

b. Add a new paragraph (1) to § 904.4 to read as follows:

(1) "Diverted milk" means milk which a pool handler reports as having been moved from a dairy farmer's farm to one of his pool plants, but which he caused to be moved from that farm to another plant, provided such movement is specifically reported and the conditions of subparagraph (1) or (2) of this para-

graph have been met. Diverted milk shall be considered to have been received at the pool plant from which it was diverted:

(1) The handler caused milk from that farm to be moved to such pool plant on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused pool milk to be moved from the farm, or caused pool milk to be moved from the farm by tank truck; or

(2) The handler caused the milk to be moved from that farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this paragraph.

4. Delete § 904.27 and substitute therefor the following:

#### § 904.27 Assignment of receipts from New York-New Jersey order pool plants.

(a) Receipts of packaged fluid milk products, other than cream, from New York-New Jersey order pool plants shall be assigned to Class I milk.

(b) Receipts of fluid milk products from New York-New Jersey order pool plants, other than packaged fluid milk products, shall be assigned to Class II milk, except as provided in § 904.28, and except that receipts during the months of August through March which are classified and priced in Class I-A or I-B under the New York-New Jersey order shall be assigned to Class I milk.

Merrimack Valley order:

#### § 934.2 [Amendment]

1. Delete paragraphs (c), (d) (2) and (4), and (e) of § 934.2 and substitute therefor the following:

(c) "Dairy farmer" means any person who produces milk which is moved from his farm to a plant other than as packaged milk.

(d) \* \* \*

(2) Any dairy farmer with respect to milk which is purchased from him by a handler and moved to a regulated plant, if that handler caused milk from the same farm to be moved as nonpool milk to an unregulated plant during the same month, except that the term shall not apply to any dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

(4) For purposes of this paragraph, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by such handler or dealer.

(e) "Producer" means any dairy farmer whose milk is moved from his farm to a pool plant, or to any other plant as diverted milk; except that the item shall not include a producer-handler, a dairy farmer for other markets, a dairy farmer with respect to exempt milk delivered, nor a dairy farmer with respect to milk which is considered as re-

ceipts from a producer under the provisions of another Federal order.

#### § 934.3 [Amendment]

2. Delete paragraphs (a) and (d) of § 934.3 and substitute therefor the following:

(a) "Plant" means the land and building, or separate portion thereof, together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products.

(d) "Receiving plant" means any plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled; or to which milk is moved from dairy farmers' farm in tank trucks and is there transferred to stationary equipment in the building or to other vehicles.

#### § 934.4 [Amendment]

3. a. Delete paragraphs (a), (f), (g) (2) and (3) of § 934.4 and substitute therefor the following:

(a) "Milk" means the commodity received from a dairy farmer as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity by weight of "half and half".

(f) "Pool milk" means milk which a handler has received as milk from producers, and all fluid milk products derived from milk so received. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at a plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month, and such milk shall be considered as received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month.

(g) \* \* \*

(2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant, up to the total quantity of nonpool milk received at the unregulated plant; except exempt milk, receipts from New York-New Jersey order pool plants which are assigned to Class I milk pursuant to § 934.27, receipts from regulated plants under the Boston, Springfield, or Worcester orders, and receipts of packaged fluid milk products from a regulated plant under any other Federal order;

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a New-York-New Jer-

sey order pool plant at which such milk was classified and priced as Class I-A or I-B, or a regulated plant under any other Federal order, without its intermediate movement to another plant.

b. Add a new paragraph (k) to § 934.4 to read as follows:

(k) "Diverted milk" means milk which a pool handler reports as having been moved from a dairy farmer's farm to one of his pool plants, but which he caused to be moved from that farm to another plant, provided such movement is specifically reported and the conditions of subparagraph (1) or (2) of this paragraph have been met. Diverted milk shall be considered to have been received at the pool plant from which it was diverted:

(1) The handler caused milk from that farm to be moved to such pool plant on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused pool milk to be moved from the farm, or caused pool milk to be moved from the farm by tank truck; or

(2) The handler caused the milk to be moved from that farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this paragraph.

§ 934.16 [Amendment]

4. Delete paragraph (e) of § 934.16 and substitute therefor the following:

(e) If moved as packaged fluid milk products to a plant subject to another Federal order, they shall be classified as Class I milk.

§ 934.27 [Amendment]

5. Delete paragraphs (c) and (d) of § 934.27 and substitute therefor the following:

(c) Receipts from New York-New Jersey order pool plants shall be assigned to Class I milk if classified and priced in Class I-A or I-B under that order.

(d) Except as provided in paragraph (c) of this section, receipts of packaged fluid milk products, other than cream, from a regulated plant under any other Federal order shall be assigned to Class I milk.

§ 996.2 [Amendment]

1. Delete paragraphs (c), (d)(2) and (4), and (e) of § 996.2 and substitute therefor the following:

(c) "Dairy farmer" means any person who produces milk which is moved from his farm to a plant other than as packaged milk.

(d) \* \* \*  
 (2) Any dairy farmer with respect to milk which is purchased from him by a handler and moved to a regulated plant, if that handler caused milk from the same farm to be moved as nonpool milk to an unregulated plant during the same month, except that the term shall not apply to any dairy farmer with respect to milk which is considered as receipts

from a producer under the provisions of another Federal order.

\* \* \*  
 (4) For purposes of this paragraph, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by such handler or dealer.

(e) "Producer" means any dairy farmer whose milk is moved from his farm to a pool plant, or to any other plant as diverted milk; except that the term shall not include a producer-handler, a dairy farmer for other markets, a dairy farmer with respect to exempt milk delivered, nor a dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

§ 996.3 [Amendment]

2. Delete paragraphs (a) and (d) of § 996.3 and substitute therefor the following:

(a) "Plant" means the land and buildings, or separate portion thereof, together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products.

\* \* \*  
 (d) "Receiving plant" means any plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmer's farms in cans and is there accepted, weighed or measured, sampled, and cooled; or to which milk is moved from dairy farmer's farms in tank trucks and is there transferred to stationary equipment in the building or to other vehicles.

§ 996.4 [Amendment]

3a. Delete paragraphs (a), (f), (g) (2) and (3) of § 996.4 and substitute therefor the following:

(a) "Milk" means the commodity received from a dairy farmer as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity by weight of "half and half".

\* \* \*  
 (f) "Pool milk" means milk which a handler has received as milk from producers, and all fluid milk products derived from milk so received. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at a plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month, and such milk shall be considered as received at the pool plant at which other milk from the same farm

of that producer is received by the handler during the month.

(g) \* \* \*  
 (2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant, up to the total quantity of nonpool milk received at the unregulated plant; except exempt milk, receipts from New York-New Jersey order pool plants which are assigned to Class I milk pursuant to § 996.27, receipts from regulated plants under the Boston, Merrimack Valley or Worcester orders, and receipts of packaged fluid milk products from a regulated plant under any other Federal order;

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a New York-New Jersey order pool plant at which such milk was classified and priced as Class I-A or I-B, or a regulated plant under any other Federal order, without its intermediate movement to another plant.

b. Add a new paragraph (k) to § 996.4 to read as follows:

(k) "Diverted milk" means milk which a pool handler reports as having been moved from a dairy farmer's farm to one of his pool plants, but which he caused to be moved from that farm to another plant, provided such movement is specifically reported and the conditions of subparagraph (1) or (2) of this paragraph have been met. Diverted milk shall be considered to have been received at the pool plant from which it was diverted:

(1) The handler caused milk from that farm to be moved to such pool plant on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused pool milk to be moved from the farm, or caused pool milk to be moved from the farm by tank truck; or

(2) The handler caused the milk to be moved from that farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this paragraph.

§ 996.16 [Amendment]

4a. Delete paragraphs (e) and (f) of § 996.16 and substitute therefor the following:

(e) If moved as packaged fluid milk products to a plant subject to another Federal order, they shall be classified as Class I milk.

(f) Except as provided in paragraph (e) of this section, if moved to a plant subject to the New York-New Jersey order, they shall be classified as Class I milk if assigned to Class I-A or I-B under that order; otherwise they shall be classified as Class II milk.

b. Delete the words "New York" as they first appear in paragraph (g) of § 996.16 and substitute therefor the words "New York-New Jersey".

## § 996.27 [Amendment]

5. Delete paragraphs (c) and (d) of § 996.27 and substitute therefor the following:

(c) Receipts from New York-New Jersey order pool plants shall be assigned to Class I milk if classified and priced in Class I-A or I-B under that order.

(d) Except as provided in paragraph (c) of this section, receipts of packaged fluid milk products, other than cream, from a regulated plant under any other Federal order shall be assigned to Class I milk.

Worcester order:

## § 999.2 [Amendment]

1. Delete paragraphs (c), (d) (2) and (4), and (e) of § 999.2 and substitute therefor the following:

(c) "Dairy farmer" means any person who produces milk which is moved from his farm to a plant other than as packaged milk.

(d) \* \* \*

(2) Any dairy farmer with respect to milk which is purchased from him by a handler and moved to a regulated plant, if that handler caused milk to be moved as nonpool milk to an unregulated plant during the same month, except that the term shall not apply to any dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

(4) For purposes of this paragraph, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by such handler or dealer.

(e) "Producer" means any dairy farmer whose milk is moved from his farm to a pool plant, or to any other plant as diverted milk; except that the term shall not include a producer-handler, a dairy farmer for other markets, a dairy farmer with respect to exempt milk delivered, nor a dairy farmer with respect to milk which is considered as receipts from a producer under the provisions of another Federal order.

## § 999.3 [Amendment]

2. Delete paragraphs (a) and (d) of § 999.3 and substitute therefor the following:

(a) "Plant" means the land and buildings, or separate portion thereof, together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is

used for the handling or processing of milk or milk products.

(d) "Receiving plant" means any plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmer's farms in cans and is there accepted, weighed or measured, sampled, and cooled; or to which milk is moved from dairy farmer's farms in tank trucks and is there transferred to stationary equipment in the building or to other vehicles.

## § 999.4 [Amendment]

3a. Delete paragraphs (a), (f), (g) (2) and (3) of § 999.4 and substitute therefor the following:

(a) "Milk" means the commodity received from a dairy farmer as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity by weight of "half and half".

(f) "Pool milk" means milk which a handler has received as milk from producers, and all fluid milk products derived from milk so received. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at a plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month, and such milk shall be considered as received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month.

(g) \* \* \*

(2) All fluid milk products, other than cream, received at a regulated plant from an unregulated plant, up to the total quantity of nonpool milk received at the unregulated plant; except exempt milk receipts from New York-New Jersey order pool plants which are assigned to Class I milk pursuant to § 999.27, receipts from regulated plants under the Boston, Merrimack Valley, or Springfield orders, and receipts of packaged fluid milk products from a regulated plant under any other Federal order.

(3) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant, except a New York-New Jersey order pool plant at which such milk was classified and priced as Class I-A or I-B, or a regulated plant under any other Federal order, without its intermediate movement to another plant.

b. Add a new paragraph (k) to § 999.4 to read as follows:

(k) "Diverted milk" means milk which a pool handler reports as having been moved from a dairy farmer's farm to one of his pool plants, but which he caused to be moved from that farm to another plant, provided such movement is specifically reported and the conditions of subparagraph (1) or (2) of this paragraph have been met. Diverted milk shall be considered to have been received at the pool plant from which it was diverted:

(1) The handler caused milk from that farm to be moved to such pool plant on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused pool milk to be moved from the farm, or caused pool milk to be moved from the farm by tank truck; or

(2) The handler caused the milk to be moved from that farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this paragraph.

## § 999.16 [Amendment]

4.a. Delete paragraphs (e) and (f) of § 999.16 and substitute therefor the following:

(e) If moved as packaged fluid milk products to a plant subject to another Federal order, they shall be classified as Class I milk.

(f) Except as provided in paragraph (e) of this section, if moved to a plant subject to the New York-New Jersey order, they shall be classified as Class I milk if assigned to Class I-A or I-B under that order; otherwise they shall be classified as Class II milk.

b. Delete the words "New York" as they first appear in paragraph (g) of § 999.16 and substitute therefor the words "New York-New Jersey".

## § 999.27 [Amendment]

5. Delete paragraphs (c) and (d) of § 999.27 and substitute therefor the following:

(c) Receipts from New York-New Jersey order pool plants shall be assigned to Class I milk if classified and priced in Class I-A or I-B under that order.

(d) Except as provided in paragraph (c) of this section, receipts of packaged fluid milk products, other than cream, from a regulated plant under any other Federal order shall be assigned to Class I milk.

Issued at Washington, D.C., this 12th day of March 1959.

[SEAL]

ROY W. LENNARTSON,  
Deputy Administrator.

[R.R. Doc. 59-2260; Filed, Mar. 16, 1959;  
8:49 a.m.]

**NOTICES**

**DEPARTMENT OF THE TREASURY**

Bureau of Customs

[342.5]

**TARIFF CLASSIFICATION OF "LUMATEX" COLOR**

MARCH 11, 1959.

Notice of prospective classification of certain merchandise formerly known as "Helizarin" color, and now known as "Lumatex" color.

It appears that a product formerly known as "Helizarin" color, and now known as "Lumatex" color, consisting of a coal-tar pigment and a synthetic resin serving as a bonding and surfacing agent is properly classifiable under the provisions of paragraph 28(a), Tariff Act of 1930, for mixtures, including solutions, consisting in whole or in part of any of the products provided for in paragraph 28(a) and is subject to duty at the rate of 7 cents per pound and 45 percent ad valorem.

Pursuant to § 16.10a(d) of the Customs Regulations (19 CFR 16.10a(d)), notice is hereby given that the existing practice of classifying such merchandise under the provision in paragraph 28, Tariff Act of 1930, as modified, for colors, dyes and stains, subject to duty at the reduced rate of 40 percent ad valorem, is under review in the Bureau of Customs.

Consideration will be given to any relevant data, views, or argument pertaining to the correct classification of this merchandise which are submitted to the Bureau of Customs, Washington 25, D.C., in writing. To assure consideration, such communications must be received in the Bureau not later than 30 days from the date of publication of this notice. No hearings will be held.

[SEAL] D. B. STRUBINGER,  
Acting Commissioner of Customs.

[F.R. Doc. 59-2254; Filed, Mar. 16, 1959; 8:48 a.m.]

**DEPARTMENT OF THE INTERIOR**

Bureau of Land Management

ALASKA

**Notice of Proposed Withdrawal and Reservation of Lands**

The Bureau of Land Management has filed an application, Serial Number A.047373 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining laws, but excepting the provisions of the mineral leasing laws and the Materials Act. The applicant desires the land for public recreation purposes.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned

officer of the Bureau of Land Management, Department of the Interior, Anchorage Operations Office, Mailing: 334 East Fifth Avenue, Anchorage, Alaska.

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

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

**TEBAY LAKES AND COPPER LAKE AREA**

**SITE NO. 1**

A parcel of unsurveyed land located near outlet of North Tebay Lake more particularly described as follows:

Beginning at Cor. No. 1 (Lat. 61°13'36" N.; Long. 144°12'50" W.) thence N. 45°00' W. 5 chains to Cor. No. 2; thence S. 45°00' W. 20 chains to Cor. No. 3; thence S. 45°00' E. approximately 5 chains to Cor. No. 4 located on shore of lake; thence meandering northeasterly approximately 20 chains to point of beginning.

Containing approximately 20 acres.

**SITE NO. 2**

A parcel of unsurveyed land located near inlet on SE side of North Tebay Lake more particularly described as follows:

Beginning at Cor. No. 1 (Lat. 61°12'00" N.; Long. 144°15'50" W.) located at mean high water on shore of N. Tebay Lake; thence S. 45°00' E. 5 chains to Cor. No. 2; thence S. 45°00' W. 10 chains to Cor. No. 3; thence N. 45°00' W. approximately 5 chains to Cor. No. 4 on shore of lake; thence meandering northeasterly along shore of lake approximately 10 chains to point of beginning.

Containing approximately 5 acres.

**COPPER LAKE AREA**

A parcel of unsurveyed land located on south shore of Copper Lake, headwaters drainage of Copper River more particularly described as follows:

Beginning at Cor. No. 1 (Lat. 62°25'00" N.; Long. 143°34'00" W.) located at high water mark on Copper Lake; thence S. 5 chains to Cor. No. 2; thence E. 10 chains to Cor. No. 3; thence N. 5 chains to Cor. No. 4; thence meandering westerly along shore of Copper Lake approximately 10 chains to point of beginning.

Containing approximately 5 acres.

ARCHIE D. CRAFT,  
Acting Operations Supervisor,  
Anchorage.

[F.R. Doc. 59-2242; Filed, Mar. 16, 1959; 8:46 a.m.]

**Office of the Secretary**

**IMPORTS OF CRUDE AND UNFINISHED PETROLEUM OILS**

Pursuant to the authority delegated to the Secretary of the Interior by Presidential Proclamation 3279, Adjusting Imports of Petroleum and Petroleum Products Into the United States (24 F.R. 1781), by a letter to the Commissioner of Customs, dated March 10, 1959, I temporarily authorized the entry for consumption and withdrawal from warehouses for consumption on or after

March 11, 1959 of crude oil and unfinished oil without licenses until such time as licenses to import could be issued.

By letter dated March 13, 1959 the Commissioner of Customs has been advised that:

Effective 12:01 a.m., Tuesday, March 17, 1959, the temporary authorization granted for the entry of crude and unfinished petroleum oils, or for the withdrawal from warehouse for consumption of those oils is withdrawn.

Effective at 12:01 a.m., Tuesday, March 17, 1959, it is requested that no crude or unfinished petroleum oils be permitted to be entered into the United States, Hawaii, or Puerto Rico, or withdrawn from warehouse for consumption, except upon authorization issued by the Office of the Administrator, Oil Import Administration, Department of the Interior, Washington, D.C.

Pending the issuance of formal licenses, the Office of the Administrator will give verbal authorization to the respective Collectors of Customs, upon telephonic request from them, for such entries and withdrawals as may be proper by authorized persons and in authorized amounts.

The Administrator is Captain M. V. Carson, Jr., and his office telephone number is Republic 7-1820, extension 4301, Washington, D.C. The office can be reached by telephone twenty-four hours a day until such time as the formal licenses have been issued.

ELMER F. BENNETT,  
Acting Secretary of the Interior.

MARCH 16, 1959.

[F.R. Doc. 59-2349; Filed, Mar. 16, 1959; 12:00 m.]

**DEPARTMENT OF COMMERCE**

Bureau of the Census

**NUMBER OF EMPLOYEES, TAXABLE WAGES, GEOGRAPHIC LOCATION, AND KIND OF BUSINESS FOR ESTABLISHMENTS OF MULTIUNIT COMPANIES**

**Notice of Determination for Surveys**

In conformity with the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225, and due Notice of Consideration having been published on February 3, 1959 (24 F.R. 742), pursuant to said Act, I have determined that a First Quarter 1959 Survey of Multiunit Companies is needed to collect information for the 1959 County Business Patterns Report. The Survey is designed to collect information on number of employees, taxable wages, geographic location, and kind of business for establishments of multiunit companies. Wherever possible, information on kind of business and county location will be taken from the 1958 Censuses of Business, Manufactures, and Mineral Industries reports. The coordination of the data for the 1959 County Business Patterns will have significant application to the needs of the public and to governmental agencies. The requested data are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to firms included in the survey and additional copies of the forms are available on request to the Director. Bureau of the Census, Washington 25, D.C.

Reports are due 30 days after receipt of the report forms.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

ROBERT W BURGESS,  
*Director,*  
*Bureau of the Census.*

[F.R. Doc. 59-2263; Filed, Mar. 16, 1959;  
9:19 a.m.]

## Bureau of Foreign Commerce

[File 23-627]

### DR. ALFRED BACK KOMMERZGESELLSCHAFT m.b.H. AND EXPRESS INTERNATIONALE SPEDITION G.m.b.H.

#### Order Denying Export Privileges for an Indefinite Period

In the matter of Dr. Alfred Back Kommerzgesellschaft, m.b.H., Wien IV, Plosgasse 1, Vienna, Austria, Express Internationale Spedition G.m.b.H., Wien IV, Wohlebengasse 18, Vienna, Austria, Respondents.

The Investigation Staff of the Bureau of Foreign Commerce, United States Department of Commerce, is conducting an investigation as to the ultimate disposition and possible transshipment of 40 tons of Tin Mill Black Plates exported from the United States for ultimate delivery to and use in Poland pursuant to General License established for that purpose. The Director of the Investigation Staff has applied for an order denying to the respondents, Dr. Alfred Back Kommerzgesellschaft m.b.H. and Express Internationale Spedition G.m.b.H. all export privileges for an indefinite period because of their failure and refusal to respond to written interrogatories duly served on them. The application was made pursuant to § 382.15 of the Export Regulations (15 CFR, Chapter III, Subchapter B) and, in accordance with the practice thereunder, was referred to the Compliance Commissioner of the Bureau of Foreign Commerce who, after considering evidence in support thereof, has recommended that it be granted.

Now, upon receipt of the Compliance Commissioner's recommendation, after reviewing and considering the evidence submitted in support of the application, from which evidence it appears (1) that an investigation is being conducted as noted above and that it is impracticable to issue subpoenas to the respondents, and (2) that relevant and material interrogatories were duly served on the respondents to which they have failed, omitted, and refused to respond without reasonable cause and without adequate explanation and, having concluded further (a) that this order is reasonable and necessary to protect the public interest

and to achieve effective enforcement of the Export Control Act of 1949, as amended, and (b) that it is advisable that persons in the United States and in other parts of the world be informed by publication of this order of the provisions hereafter set forth so that the respondents may be prevented from receiving and transshipping commodities exported from the United States so long as it is effective. *It is hereby ordered.*

I. All outstanding validated export licenses in which the respondents, Dr. Alfred Back Kommerzgesellschaft m.b.H. and Express Internationale Spedition G.m.b.H., appear or participate as purchaser, intermediate or ultimate consignee, or otherwise, are hereby revoked and shall be returned forthwith to the Bureau of Foreign Commerce for cancellation.

II. The respondents, their successors or assigns, officers, representatives, agents, and employees, are hereby denied all privileges of participating directly or indirectly in any manner, form, or capacity in any past, present, or future exportation of any commodity or technical data from the United States to any foreign destination, including Canada. Without limitation of the generality of the foregoing, participation in an exportation shall include and prohibit said respondents and such other persons, participation (a) as parties or as representatives of a party to any validated export license application; (b) in the obtaining or using of any validated or general export license or other export control document; (c) in the receiving, ordering, buying, selling, using, or disposing in any foreign country of any commodities in whole or in part exported from the United States; and (d) in the financing, forwarding, transporting, or other servicing of exports from the United States.

III. This denial of export privileges shall apply not only to the respondents, but also to any person, firm, corporation, or business organization with which they now or hereafter may be related by ownership, control, position of responsibility, or other connection in the conduct of trade involving exports from the United States or services connected therewith.

IV. This order shall remain in effect until the respondents satisfactorily answer or furnish written information or documents in response to the interrogatories heretofore served on them or give adequate reason for their failure or refusal to respond, except insofar as it may be amended or modified hereafter in accordance with the Export Regulations.

V. No person, firm, corporation, or other business organization, within the United States or elsewhere (whether or not engaged in trade relating to exports from the United States) shall, on behalf of or in any association with the respondents or any related party, without prior disclosure of the facts to and specific authorization from the Bureau of Foreign Commerce, directly or indirectly in any manner, form, or capacity (a) apply for, obtain, transfer, or use any license, shipper's export declaration, bill

of lading, or other export control document relating to any exportation of commodities from the United States, or (b) order, receive, buy, sell, deliver, use, dispose of, finance, transport, forward, or otherwise service or participate in an exportation from the United States, or in a re-exportation of any commodity exported from the United States, or do any of the foregoing acts with respect to any exportation in which any respondent or any related party may have any interest or obtain any benefit of any kind or nature, direct or indirect.

VI. In accordance with the provisions of § 382.11(c) of the Export Regulations, each of the respondents may move, at any time prior to the cancellation or termination hereof, to vacate or modify this indefinite denial order by filing an appropriate application therefor, supported by evidence, with the Compliance Commissioner, and he or it may request oral hearing thereon, which, if requested, will be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

Dated: March 12, 1959.

FRANK W SHEAFFER,  
*Acting Director,*  
*Office of Export Supply.*

[F.R. Doc. 59-2245; Filed, Mar. 16, 1959;  
8:47 a.m.]

## Maritime Administration

[Docket No. S-85]

### MOORE-McCORMACK LINES, INC.

#### Notice of Application and Hearing

Notice is hereby given of the application of Moore-McCormack Lines, Inc., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the "SS Robin Mowbray," which is under time charter to States Marine Lines to engage in one intercoastal voyage commencing at United States North Pacific ports on or about April 3, 1959, carrying a full cargo of lumber to United States North Atlantic ports. This application may be inspected by interested parties in the Office of Government Aid, Maritime Administration.

A hearing on the application has been set before the Maritime Administrator for March 24, 1959, at 10 a.m., e.s.t., in Room 4458, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on March 23, 1959, notify the Secretary, Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business

March 23, 1959, will not be granted in this proceeding.

Dated: March 13, 1959.

[SEAL] JAMES L. PIMPER,  
Secretary.

[F.R. Doc. 59-2299; Filed, Mar. 16, 1959; 8:50 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 7038 et al.]

### SOUTHEASTERN AREA LOCAL SERVICE CASE

#### Notice of Oral Argument

In the matter of the public convenience and necessity requirements for local air service in the Southeastern States area.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that oral argument in the above-entitled proceeding is assigned to be held on March 31, 1959, at 10:00 a.m., e.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., March 12, 1959.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F.R. Doc. 59-2261; Filed, Mar. 16, 1959; 9:19 a.m.]

[Docket No. 10098]

### NATIONAL-PANAGRA ACCOUNTING INVESTIGATION

#### Notice of Hearing

In the matter of the proper reporting under the Uniform System of Accounts of certain flight equipment employed in the National-Panagra Interchange involving service between New York and Latin America.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, and the appropriate Board regulations thereunder, that a public hearing will be held in the above-entitled proceeding on April 9, 1959, at 10:00 a.m. (local time) in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Edward T. Stodola.

Without limiting the scope of the issues presented by Docket No. 10098, particular attention will be directed to a determination of the lawfulness of the reporting by National Airlines, Inc., and Pan American-Grace Airways, Inc., under the Uniform System of Accounts and Reports For Air Carriers of certain flight equipment used under the National-Panagra interchange arrangements. For further details regarding this proceeding and the issues involved therein, interested persons are referred to Board Order No. E-13312, dated December 23, 1958, and to the Report of Prehearing Conference served on February 9, 1959, both of which documents are on file with the Civil Aeronautics Board.

No. 52—Part I—4

Notice is hereby further given that any person not a party of record to this proceeding desiring to be heard in support of or in opposition to questions involved in this case must file with the Board on or before April 9, 1959, a statement setting forth the matters of fact and law which he desires to advance. Any person filing such a statement may appear at the hearing and participate in the proceeding in accordance with the provisions of Rule 14 of the Board's rules of practice in economic proceedings.

Dated at Washington, D.C., March 11, 1959.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F.R. Doc. 59-2262; Filed, Mar. 16, 1959; 9:19 a.m.]

## GENERAL SERVICES ADMINISTRATION

[Delegation of Authority 363]

### HEADS OF EXECUTIVE AGENCIES

#### Authority to Use Title III of the Federal Property and Administrative Services Act of 1949

1. Pursuant to authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (herein called the Act), authority is hereby delegated to all executive agencies, except those specified in 10 U.S.C. 2303(a), to utilize the provisions of Title III, other than section 305 (Advance Payments), of the Act when procuring property and services.

2. This authority shall be exercised in accordance with applicable limitations and requirements of the Act, particularly sections 304 and 307, and policies, procedures, limitations, and controls, prescribed by this Administration.

3. The authority herein delegated may be redelegated by the head of the executive agency concerned to any officer or employee of the agency, except as precluded by section 307 of the Act.

4. Such review shall be made of procurement operations and procedures under this delegation as is necessary to assure that procurement practices are conducted in an economical and efficient manner and in accordance with this delegation.

5. Except for transactions initiated before the effective date of this delegation, all prior delegations of authority to executive agencies (except delegations authorizing the making of advance payments in negotiated contracts) to utilize any authority contained in Title III of the Act are revoked and superseded on the effective date hereof.

6. This delegation shall become effective on the effective date hereof.

Dated: March 10, 1959.

FRANKLIN FLOETE,  
Administrator of General Services.

[F.R. Doc. 59-2302; Filed, Mar. 16, 1959; 8:51 a.m.]

## FEDERAL POWER COMMISSION

[Docket No. G-16603 etc.]

### TRANSCONTINENTAL GAS PIPE LINE CORP. ET AL.

#### Notice of Applications, Consolidation of Proceedings and Date of Hearing

MARCH 10, 1959.

In the matters of Transcontinental Gas Pipe Line Corporation, Docket No. G-16603; Pan American Petroleum Corporation, Docket No. G-16207; Sun Oil Company (Southwest Division), Docket No. G-16526; Republic Natural Gas Company, et al., Docket No. G-16540; R. R. Frankel, Docket No. G-16840; Kerr-McGee Oil Industries, Inc., Docket No. G-17381; Pan American Petroleum Corporation, Docket No. G-17417; Phillips Petroleum Company and Southern Natural Gas Company<sup>1</sup>, Docket No. G-17444; Phillips Petroleum Company, Docket No. G-17447.

Take notice that on October 20, 1958, Transcontinental Gas Pipe Line Corporation (Transco) filed an application, as amended on December 22, 1958, for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, for authorization to construct and operate pipeline facilities which will provide 145,580 Mcf per day of additional capacity that will be utilized to meet the increased requirements of 44 existing resale customers and increase its existing firm transportation service for the Sun Oil Company (Sun) by 9,000 Mcf per day to 29,000 Mcf per day.

Transco proposes the construction of 288.53 miles of pipeline looping of which the major portion is the installation of 36-inch diameter partial third line loops on its main line primarily in the southern portion of its system. In addition, a total of 61,380 horsepower will be installed in two new and eleven existing stations located primarily on the northern part of its system. The incremental sales capacity increase by virtue of the projected construction is 145,580 Mcf per day bringing Transco's peak day pipeline capacity to 1,336,162 Mcf, excluding storage deliveries and gas transported for Tennessee Gas Transmission Company, of which 18,432 Mcf will remain unlocated and available at any point on the system as far north as Station 20 near Philadelphia. Including previously authorized storage deliveries and gas transported for Tennessee Gas Transmission Company, Transco's total peak day delivery capacity will be about 1,732,830 Mcf.

Transco also proposes minor additional field facilities to receive additional gas from several producers in Louisiana; a loop on its lateral near Philadelphia to deliver the increased volumes to Sun; and three new sales meters for delivering increased volumes to existing customers.

Of the additional capacity for which authorization is sought 101,300 Mcf is for

<sup>1</sup>A joint venture resulting from a Joint Venture Agreement, dated November 28, 1956, between Phillips Petroleum Company and Southern Natural Gas Company.

Transco's high load factor contract demand customers; 16,848 Mcf is for general service customers, and 9,000 Mcf is for Sun. Several of the customers have entered into agreements with Transco providing for the increased deliveries. Sun proposes to use its 9,000 Mcf per day for a new chemical plant near Marcus Hook, Pennsylvania.

Transco has estimated the cost of the entire project to be \$68,966,000 including \$7,878,357 for overheads, interest during construction, contingencies and franchises and consents. The project will be

financed in conjunction with Transco's overall financial program for 1959 which contemplates the issuance of \$110,000,000 of 5½ per cent bonds, \$20,000,000 of 6 per cent preferred stock and \$12,000,000 of common stock.

Take further notice that the independent producers, hereinabove captioned, propose to sell, pursuant to section 7(c) of the Natural Gas Act, natural gas in interstate commerce from production of certain units, leases or acreage located as indicated below to Transco as indicated for resale:

Docket No.	Applicant	Address	Source of gas	Date filed
G-16207...	Pan American Petroleum Corp.	Tulsa, Okla. ....	Cooke Field, LaSalle County, Tex.	Sept. 3, 1958
G-16526...	Sun Oil Co. (Southwest Division)	Dallas, Tex. ....	Cooke Field, LaSalle County, Tex.	Oct. 6, 1958
G-16540...	Republic Natural Gas Co., et al.	Dallas, Tex. ....	Raceland Field, Lafourche Parish, La.	Do.
G-16840...	R. R. Frankel.....	New Orleans, La. ....	Chegby Field, Lafourche Parish, La.	Oct. 30, 1958
G-17381...	Kerr-McGee Oil Industries, Inc.	Oklahoma City, Okla.	Blocks 28 and 32 Fields, Ship Shoal Area, Offshore Terrebonne Parish, La.	Dec. 22, 1958
G-17417...	Pan American Petroleum Corp.	Tulsa, Okla. ....	Ship Shoal Area, Offshore Terrebonne Parish, La.	Dec. 31, 1958
G-17444...	Phillips Petroleum Co. and Southern Natural Gas Co.	Birmingham, Ala. ....	Ship Shoal Block 28 Field, Offshore Terrebonne Parish, La.	Jan. 2, 1959
G-17447...	Phillips Petroleum Co. ....	Bartlesville, Okla. ....	Ship Shoal Block, 32 Field, Offshore Terrebonne Parish, La.	Do.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 18, 1959, at 10:00 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 30, 1959.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2232; Filed, Mar. 16, 1959; 8:45 a.m.]

[Docket No. G-16136]

## TRANSCONTINENTAL GAS PIPE LINE CORP

### Notice of Application and Date of Hearing

MARCH 10, 1959.

Take notice that on August 27, 1958, Transcontinental Gas Pipe Line Corporation (Transco), a Delaware corporation with its principal office in Houston, Texas, filed in Docket No. G-16136 an application, as supplemented November 14, 1958, pursuant to section 7 of the

Natural Gas Act, for a certificate of public convenience and necessity authorizing (1) the construction and operation of a meter station, together with appurtenances to be installed in the Church Point Field, Acadia Parish, Louisiana, at approximate Milepost 11.43 on its existing 8-inch Church Point lateral supply pipeline and (2) to operate the existing Church Point lateral which is approximately 13.46 miles in length and extends from a point in the Church Point Field to a point of connection with Transco's main 20-inch Louisiana lateral supply pipeline at a point approximately 12.24 miles south of its Compressor Station No. 51 which will enable Transco to purchase and receive approximately 1,000 Mcf per day of natural gas produced by Sunray Mid-Continent Oil Company (Sunray), in the Church Point Field, subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission, and open for public inspection.

Sunray was authorized in Docket No. G-9265 to make the above sale of gas to Transco and the sale is covered by a gas sales contract dated July 25, 1955, executed by and between Transco and Sunray, the sole signatory seller party. Sunray's gas has previously been transported from the field to Transco's system by means of facilities owned and operated by Texas Gas Transmission Corporation (Texas Gas), under a short term transportation agreement between Texas Gas and Sunray. This agreement was terminated by Sunray and such transportation discontinued on February 6, 1958, necessitating the arrangement covered by the instant application.

Texas Gas rendered the above service pursuant to temporary authority granted November 8, 1955 in Docket No. G-9624. Subsequently, Docket No. G-9624 was

dismissed by order issued June 4, 1958, pursuant to Texas Gas' motion to dismiss filed April 28, 1958.

The estimated initial cost of Transco's proposed metering facilities is \$7,700, which cost will be financed from company funds. The actual initial cost of the previously constructed Church Point lateral is stated as \$419,167.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 15, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 1, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2233; Filed, Mar. 16, 1959; 8:45 a.m.]

[Docket Nos. G-16518, G-16723]

## ATLANTIC REFINING CO.

### Order for Hearings and Suspending Proposed Changes in Rates<sup>1</sup>

MARCH 10, 1959.

On February 11, 1959, The Atlantic Refining Company (Atlantic) tendered the following designated filings proposing tax changes to its presently submitted rate increases:

Description: Notices of change, dated February 9, 1959.

Docket No. G-16518

Purchaser: United Fuel Gas Company.

Rate schedule designation: (1) Supplement No. 1 to Supplement No. 6 to Atlantic's FPC Gas Rate Schedule No. 166. (2) Supplement No. 1 to Supplement No. 7 to Atlantic's FPC Gas Rate Schedule No. 63.

<sup>1</sup> This order does not provide for the consolidation for hearing or disposition of these matters which are the subject of this order, nor should it be so construed.

Docket No. G-16728

[Docket No. G-17409]

Purchaser: Tennessee Gas Transmission Company.

Rate schedule designation: (1) Supplement No. 1 to Supplement No. 4 to Atlantic's FPC Gas Rate Schedule No. 3. (2) Supplement No. 1 to Supplement No. 7 to Atlantic's FPC Gas Rate Schedule No. 4.

In its filings, Atlantic requested that its prior supplements be amended to reflect the tax reimbursement resulting from the suspension of the Louisiana gas gathering tax and the increase in the Louisiana gas severance tax as set forth in the above designated supplements. The Commission in its orders issued October 14 and 29, 1958, suspended Atlantic's prior supplements until April 1, 1959, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

The Commission finds:

(1) It is necessary and in the public interest that the above designated supplements be permitted to be filed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed changes, and that the above designated supplements be suspended and the use thereof deferred as herein-after ordered.

The Commission orders:

(A) The above designated supplements are hereby permitted to be filed.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings be held upon dates to be fixed by notice from the Secretary concerning the lawfulness of the proposed rates and charges contained in Atlantic's above designated supplements.

(C) Pending such hearing and decision thereon, said supplements are suspended and the use thereof deferred until April 1, 1959, or until the date upon which Atlantic's prior supplements are made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) The issuance of this order shall constitute full notice of the filings and publication of the proposed changes in rates insofar as their effective dates are concerned.

(F) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission,

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2234; Filed, Mar. 16, 1959; 8:45 a.m.]

**ALGONQUIN GAS TRANSMISSION CO. AND TENNESSEE GAS TRANSMISSION CO.**

**Notice of Application and Date of Hearing**

MARCH 11, 1959.

Take notice that on December 31, 1958, Algonquin Gas Transmission Company (Algonquin) and Tennessee Gas Transmission Company (Tennessee) filed in Docket No. G-17409 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas between them; the construction and operation by Algonquin of approximately 0.73 mile of 6-inch lateral pipeline, and the construction and operation by Tennessee of a tap to effect the aforesaid exchange of gas; and an increase in the authorized maximum daily deliveries by Algonquin to Connecticut Gas Company (Connecticut Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin presently supplies Connecticut Gas with natural gas for resale in various Connecticut localities. It is desired to convert the City of Thompsonville, Connecticut, from mixed gas to straight natural gas in the summer of 1959. Tennessee's main line passes within 2½ miles of the City of Thompsonville. The present proposal seeks to avoid construction of some 15 miles of pipeline by Algonquin through a densely-populated area in Connecticut, by constructing a tap on Tennessee's line near Longmeadow, Massachusetts, where Tennessee would deliver gas into the 0.73 mile of line to be constructed by Algonquin from Tennessee's tap to a connection with Connecticut's Gas's 6-inch line which the latter will construct from the Massachusetts-Connecticut boundary to Thompsonville. Algonquin would return equivalent amounts of gas to Tennessee at several existing points of interconnection between their systems.

The estimated total cost of Algonquin's proposed facilities, including overhead and contingencies, is \$36,450, to be defrayed from funds on hand. Tennessee's proposed interconnection facilities are estimated to cost \$1,550 which cost is to be defrayed from its general funds.

Algonquin also requests authority in the subject application to sell an additional 190 Mcf of natural gas per day to Connecticut Gas, increasing its authorized maximum delivery to 19,900 Mcf per day. Connecticut Gas's market estimates indicate a need for the additional gas due mainly to increasing space heating demands in its service areas. A portion of the gas to be delivered to Connecticut Gas at Thompsonville by Algonquin will be utilized as fuel for a gas turbine electric generating plant owned and operated by Connecticut Gas.

The exchange of gas proposed herein will be made pursuant to an agreement between Algonquin and Tennessee dated September 9, 1958, which agreement lim-

its Tennessee's obligation to deliver gas to Algonquin at Longmeadow to a maximum of 400 Mcf per hour.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 6, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters, involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 1, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2235; Filed, Mar. 16, 1959; 8:45 a.m.]

[Docket No. G-17257]

**EL PASO NATURAL GAS CO.**

**Notice of Application and Date of Hearing**

MARCH 11, 1959.

Take notice that on December 15, 1958, El Paso Natural Gas Company (Applicant) filed in Docket No. G-17257 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of small scale budget-type routine facilities during the calendar year 1959, all as more fully set forth in the application, supplemented on January 8, 1959, and amended on January 29, 1959, which material is on file with the Commission and open to public inspection.

The proposed facilities consist of:

(1) Not more than 30 main line taps, with appurtenant facilities, through which Applicant will sell and deliver from 50 to 500 Mcf of natural gas per day to existing resale customers in Texas, New Mexico and Arizona, at an estimated cost of \$275 per tap, or a maximum total of \$8,250 for 30 taps.

(2) Not more than 15 meter stations, with regulating and other necessary

appurtenances, to sell and deliver from 50 to 5,000 Mcf of natural gas per day to existing resale customers, at an estimated cost of \$2,000 to \$6,000 per meter station, or a maximum total of \$90,000 for 15 meter stations.

(3) Two lateral or branch pipelines, with related metering and appurtenant facilities, of not less than 2-inches more than 6½ inches outside diameter and of unknown length and location at this time, to sell and deliver from 50 to 5,000 Mcf of natural gas per day to existing resale customers, at a maximum estimated cost of \$350,000 per line, or a maximum total of \$700,000 for the two.

The total estimated cost of all facilities proposed under this application will not exceed \$798,250, which Applicant proposes to finance from its working funds or short-term loans.

The following maximum volumes of natural gas are anticipated to be required during the calendar year 1959, under this application:

	Mcf at 14.73 psia		
	30 taps	15 meter stations	Total
Peak day requirements	2,190	21,495	23,685
Annual requirements	295,650	1,015,125	1,310,775

No increase in main line capacity is proposed. All sales are to be made under existing filed rates or rates subsequently made effective by the Commission.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 14, 1959, at 9:30 a.m. e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 3, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2236; Filed, Mar. 16, 1959; 8:45 a.m.]

[Docket No. G-16875]

KIRKWOOD & MORGAN, INC.

Notice of Application and Date of Hearing

MARCH 11, 1959.

Take notice that on November 3, 1958, Kirkwood & Morgan, Inc. (Applicant) filed in Docket No. G-16875 an application pursuant to section 7(b) of the Natural Gas Act for approval of the abandonment of natural gas service to Tennessee Gas Transmission Company (Tennessee) from the Bailey (4700' Sand) Field in Nueces County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The subject service, rendered under a contract dated September 12, 1955, on file as Kirkwood & Morgan, Inc., FPC Gas Rate Schedule No. 3, was authorized by the Commission on February 2, 1956, in Docket No. G-9380.

Applicant states that the well from which this service was rendered (W. C. Rivers No. 1 Well) has ceased to produce and has been plugged and abandoned. The cancellation agreement between Applicant and Tennessee dated September 23, 1958, is on file as Supplement No. 1 to Kirkwood & Morgan, Inc., FPC Gas Rate Schedule No. 3.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 15, 1959, at 9:30 a.m. e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 1, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 59-2237; Filed, Mar. 16, 1959; 8:46 a.m.]

[Docket Nos. G-14204—G-14207]

CHARLES B. JOHNSTON, JR. AND OHIO OIL & GAS CO.

Notice of Applications and Date of Hearing

MARCH 11, 1959.

In the matters of Charles B. Johnston, Jr., Docket Nos. G-14204 and G-14206; Ohio Oil & Gas Company, Docket Nos. G-14205 and G-14207.

Take notice that on January 7, 1958, Charles B. Johnston, Jr. (Johnston), in Docket Nos. G-14204 and G-14206 and Ohio Oil & Gas Company (Ohio) in Docket Nos. G-14205 and G-14207, filed applications, pursuant to section 7 of the Natural Gas Act, for authorization to abandon and render service as herein-after described, subject to the jurisdiction of the Commission, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Applicants seek authority as follows:

(1) Ohio in Docket Nos. G-14205 and G-14207 to abandon service to Hope Natural Gas Company (Hope) from leases in Meade District, Tyler County, West Virginia, covered by a contract dated September 12, 1930, as amended, now on file as Charles B. Johnston, Jr., FPC Gas Rate Schedule No. 1 (formerly Ohio Oil & Gas Company FPC Gas Rate Schedule No. 1), and a contract dated August 8, 1927. Ohio has filed a short form statement, pursuant to section 154.92(c) of the rules covering its sale to Hope under the latter contract, which statement was originally accepted for filing as Ohio's FPC Gas Rate Schedule No. 2 but is now designated as Johnston's FPC Gas Rate Schedule No. 2.

(2) Johnston in Docket Nos. G-14204 and G-14206 to continue the services proposed to be abandoned by Ohio herein.

By instrument of assignment dated November 6, 1957, Ohio conveyed to Johnston the subject leases dedicated to performance of the above-mentioned contracts. Johnston proposes to continue service to Hope under said contracts.

Concurrently with his certificate applications in Docket No. G-14204 and G-14206, Johnston filed notices of succession to Ohio's aforementioned rate schedules together with the November 6, 1957, assignment. On the basis thereof, said rate schedules have been redesignated as heretofore noted. The assignment has been designated as Supplement No. 9 to Johnston's FPC Gas Rate Schedule No. 1 and as Supplement No. 1 to Johnston's FPC Gas Rate Schedule No. 2.

Ohio was authorized on April 11, 1955 in Docket No. G-5460 and on July 13, 1955 in Docket No. G-8585 to render the services now proposed to be abandoned in Docket Nos. G-14207 and G-14205, respectively.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 15, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR, 1.8 or 1.10) on or before April 1, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
*Secretary.*

[F.R. Doc. 59-2238; Filed, Mar. 16, 1959;  
8:46 a.m.]

[Docket No. G-17242]

**NATURAL GAS PIPELINE COMPANY  
OF AMERICA**

**Notice of Application and Date of  
Hearing**

MARCH 11, 1959.

Take notice that on December 12, 1958, Natural Gas Pipeline Company of America (Applicant) filed in Docket No G-17242 a "budget type" application, as amended on February 9, 1959, for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the construction and operation of meter stations, lateral pipelines and taps on its existing transmission system to enable it to take into its certificated main pipeline system from time to time during the calendar year 1959, natural gas which will be purchased from producers in the general area of said existing transmission system, all as more fully set forth in the application and amendment which are on file with the Commission and open to public inspection.

The purpose of the present proposal is to augment Applicant's ability to act with reasonable dispatch in contracting for and attaching to its pipeline system new supplies of natural gas in various producing areas generally coextensive with its system.

The total cost of all projects for which authorization is sought herein is not to exceed \$1,000,000, with no single project to exceed a cost of \$250,000.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 14, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 3, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,  
*Secretary.*

[F.R. Doc. 59-2239; Filed, Mar. 16, 1959;  
8:46 a.m.]

**SAINT LAWRENCE SEAWAY DE-  
VELOPMENT CORPORATION**

**TARIFF OF TOLLS**

Whereas the Tolls Committee of the Saint Lawrence Seaway Development Corporation held conferences on the Method of Assessing and Collecting Tolls in Washington, D.C., on September 9, 1957, and in Chicago, Illinois, on September 11, 1957; and

Whereas on June 18, 1958, the Saint Lawrence Seaway Development Corporation and The St. Lawrence Seaway Authority of Canada jointly announced the conclusions and recommendations of the Tolls Committees for the requirements for measurement rules and toll rates on the Saint Lawrence Seaway; and

Whereas on August 6, 1958, the Saint Lawrence Seaway Development Corporation held hearings in Washington, D.C., on the proposed rules for the measurement of vessels and cargoes, and proposed tolls and related matters; and

Whereas on January 29, 1959, the Administrator of the Saint Lawrence Seaway Development Corporation and the President of The St. Lawrence Seaway Authority of Canada signed an agreement on the Tariff of Tolls for the Saint Lawrence Seaway; and

Whereas on February 25, 1959, the President of the United States approved the agreement and the Tariff of Tolls for the Saint Lawrence Seaway; and

Whereas on March 9, 1959, the Governments of the United States and Canada, through an exchange of notes between the State Department and the Department of External Affairs of Canada, arrived at a Governmental agreement for the establishment of rates of tolls and related matters for the joint operation of the Seaway between the United States and Canada:

Now, therefore, the Saint Lawrence Seaway Development Corporation pursuant to the Act of Congress of May 13, 1954, as amended, 68 Stat. 92-93, 33 U.S.C. 988, and pursuant to the foregoing agreements including the agreement of March 9, 1959 by and between the Governments of United States and Canada, and the approval of February 25, 1959 by the President of United States, hereby gives notice of the following Tariff of Tolls for the use of the Saint Lawrence Seaway to be effective upon the opening of the Seaway or any part thereof:

**TARIFF OF TOLLS**

1. This tariff may be cited as the St. Lawrence Seaway Tariff of Tolls.

**INTERPRETATION**

2. In this tariff,

(a) "Authority" means The St. Lawrence Seaway Authority;

(b) "Bulk cargo" means such goods as are loose or in mass and generally must be shovelled, pumped, blown, scooped or forked in the handling and, without limiting the generality of the term or otherwise affecting its meaning, shall be deemed to include:

(i) Barley, buckwheat, corn, dried beans, dried peas, flaxseed, rape seed and other oil seeds, flour, grain screenings, mill feed containing not more than 35 percent of ingredients other than grain or grain products, oats, rye and wheat, loose or in sacks;

(ii) Cement, loose or in sacks;

(iii) Coke and petroleum coke, loose or in sacks;

(iv) Domestic package freight;

(v) Liquids carried in ships' tanks;

(vi) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, coal, gravel, phosphate rock, sand, stone and sulphur;

(vii) Pig iron, scrap iron and scrap steel;

(viii) Pulpwood, poles and logs, loose or bundled;

(ix) Raw sugar, loose or in sacks;

(x) Woodpulp, loose or in bales;

(c) "Cargo" means all goods aboard a vessel whether carried as revenue or non-revenue freight or carried for the vessel owner, except goods carried as ships' fuel, ballast or stores, or crew and passengers' personal effects;

(d) "Corporation" means the Saint Lawrence Seaway Development Corporation;

(e) "Domestic package freight" means cargo, the shipment of which originates at one Canadian point and terminates at another Canadian point, or which originates at one United States point and terminates at another United States point, but shall not include any import or export cargo designated at the point of

origin for trans-shipment by water at a point in Canada or in the United States;

(f) "General cargo" means all goods not included in the definition of bulk cargo under paragraph (b) above;

(g) "Passenger" means any person being transported through the Seaway who has paid a fare for passage;

(h) "Pleasure craft" means a vessel, however propelled, that is used exclusively for pleasure and does not carry passengers;

(i) "St. Lawrence Seaway" includes all facilities and services authorized under the St. Lawrence Seaway Authority Act, Chapter 242, Revised Statutes of Canada, 1952, and under Public Law 358, 83d Congress, May 13, 1954, enacted by the Congress of the United States, and including the Welland Canal, which facilities and services are under the control and administration or immediate financial responsibility of either the Authority or the Corporation;

(j) "Seaway" means The St. Lawrence Seaway;

(k) "Tolls" means the total assessment levied against a vessel, its cargo and passengers for complete or partial transit of the Seaway covering a single trip in one direction;

(l) "Ton" means, unless otherwise stated, a unit of weight of 2,000 pounds;

(m) "Vessel" means every type of craft used as a means of transportation on water, except a vessel of or employed by the Authority or the Corporation.

#### TOLLS

3. (1) The tolls shall be as set forth in the Schedule hereto;

(2) The tolls under this tariff are due from the representative of each vessel as soon as they are incurred and payment shall be made to the Authority at Cornwall, Ontario, within fourteen days of the date of billing by the Authority. An additional charge for non-payment within this period may be levied in the discretion of the Authority in an amount not to exceed 5 per cent of the amount due.

(3) The tolls for the section between Montreal and Lake Ontario shall be paid 71 per cent in Canadian dollars and 29 per cent in United States dollars. Payments for transit through locks in Canada only shall be made in Canadian dollars, and payments for transit through locks in the United States only shall be paid in United States dollars.

(4) The tolls for transit of the Welland Canal shall be paid in Canadian dollars and shall accrue to the Authority.

#### SECURITY FOR PAYMENT

4. The representative of each vessel shall provide the Authority with security, satisfactory to the Authority, for payment of tolls.

#### DESCRIPTION AND WEIGHT OF CARGO

5. (1) A cord of pulpwood shall be deemed to weigh 3,200 pounds.

(2) (a) 1,000 f.b.m. of sawn softwood lumber with less than 15 percent moisture content shall be deemed to weigh 1,700 pounds;

(b) 1,000 f.b.m. of sawn softwood lumber with 15 percent moisture content or over shall be deemed to weigh 2,100 pounds;

(c) 1,000 f.b.m. of sawn hardwood lumber with less than 15 percent moisture content shall be deemed to weigh 2,500 pounds;

(d) 1,000 f.b.m. of sawn hardwood lumber with 15 percent moisture content or over shall be deemed to weigh 3,100 pounds.

(3) The tonnage used in the assessment of tolls shall be calculated to the nearest 2,000 pounds.

SCHEDULE

	Tolls		
	Montreal to or from Lake Ontario	Lake Ontario to or from Lake Erie (Welland Canal)	Complete transit, total
1. For transit of the Seaway, a composite toll, comprising:			
(1) A charge per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast	\$0.04	\$0.02	\$0.06
(2) A charge per ton of cargo, as certified on ship's manifest or other document, as follows:			
Bulk cargo	.40	.02	.42
General cargo	.90	.05	.95
(3) A charge per passenger	3.50	4.00	7.50
(4) Minimum charges, subject to the provisions of sub-items (1), (2) and (3) above:			
Pleasure craft	14.00	16.00	30.00
Other vessels	28.00	32.00	60.00

2. For partial transit of the Seaway:

(1) Between Montreal and Lake Ontario, in either direction, 15 percent per lock of the applicable toll;

(2) Between Lake Ontario and Lake Erie, in either direction (Welland Canal), 50 percent of the applicable toll; no toll to be assessed unless at least one lock is transited, or with respect to Lock 1 of the Third Canal at Port Dalhousie, Ontario.

(3) Minimum charges:

Pleasure craft, \$2.00 per vessel per lock transited;

Other vessels, \$4.00 per vessel per each lock transited.

[SEAL] LEWIS G. CASTLE,  
Administrator, Saint Lawrence  
Seaway Development Corporation.

[F.R. Doc. 59-2251; Filed, Mar. 16, 1959;  
8:48 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2059]

### BAKERS SECURITIES CORP.

#### Notice of Application To Strike From Listing and Registration, and of Opportunity for Hearing

MARCH 11, 1959.

In the matter of Bakers Securities Corporation common stock; File No. 1-2059.

Philadelphia-Baltimore Stock Exchange has made application, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, to strike the specified security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

This application is based on the small volume of trading in the stock on the Exchange. The issuer has advised the Exchange that it has no objection to the delisting.

Upon receipt of a request, on or before March 27, 1959, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F.R. Doc. 59-2243; Filed, Mar. 16, 1959;  
8:47 a.m.]

## SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30-IV-7  
(Revision 1)]

### BRANCH MANAGER, CHARLOTTE, NORTH CAROLINA

#### Delegation Relating to Financial Assistance Procurement & Technical Assistance and Administrative Functions

I. Pursuant to the authority vested in the Regional Director by Delegation No. 30 (Revision 4), as amended (22 F.R. 5811, 8197, 23 F.R. 557, 1768, 8435), there is hereby delegated to the Manager of the Charlotte Branch Office the following authority:

A. *Specific—Financial assistance.* To take the following actions in accordance with the limitations of such delegations as set forth in SBA-500, Financial Assistance Manual:

1. To approve the following types of loans:

a. Direct business loans in an amount not exceeding \$20,000;

b. Participation business loans in an amount not exceeding \$100,000; and

c. Disaster loans in an amount not exceeding \$50,000.

2. To decline original applications but not reconsideration of disaster loans.

3. To approve or decline Limited Loan Participation loans.

4. To enter into Disaster Participation Agreements with banks.

5. To execute loan authorizations for Washington approved loans and for loans approved under delegated authority, said execution to read as follows:

WENDELL B. BARNES, *Administrator,*

By \_\_\_\_\_  
*Manager, Charlotte Branch Office.*

6. To modify or amend authorizations for business or disaster loans approved by the Administrator, the Deputy Administrator for Financial Assistance, the Director, Office of Loan Processing or the Chairman, Loan Review Board, by the issuance of Certificates of Modification, and to modify or amend authorizations for loans approved under delegated authority in any manner consistent with the original authority to approve loans.

7. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

8. To reinstate any loan authorization cancelled prior to the first disbursement within six months from the date of the original authorization providing that no adverse change has occurred since the loan application was approved.

9. To cancel wholly or in part undisbursed balances of partially disbursed loans and deferred participation agreements, where the Administration has not purchased its participation.

10. To approve, after disbursement or partial disbursement, the salary of new employees, not to exceed \$10,000 per annum.

11. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents and certify to the participating bank that such documents are in compliance with the participation authorization.

12. To do and to perform all and every act and thing requisite, necessary and proper to be done for the purpose of effecting the servicing, administration and liquidation of any disaster loan including, without limiting the generality of the foregoing, all powers, terms, conditions and provisions as authorized herein for other loans. Said powers, terms, conditions and provisions shall apply to all documents, agreements or other instruments heretofore or hereafter executed in connection with any loan included in the above functions where such documents, agreements or other instruments are now, or shall be hereafter, in the name of the Reconstruction Finance Corporation or the Small Business Administration.

13. To take the following actions in the administration, collection and liquidation of business or disaster loans:

a. Approve or reject substitutions of accounts receivable and inventories.

b. Release, or consent to the release of inventories, accounts receivable or cash collateral, real or personal property, offered as collateral on loan, including the release of all collateral when loan is paid in full.

c. Release dividends on life insurance policies held as collateral for loans; approve the application of same against premium due; release or consent to the release on participation loans, of insurance funds covering loss or damage to property securing the loan and expired hazard insurance policies.

d. Approve the sale of real or personal property and the exchange of equipment held as collateral on loans.

e. Defer until final maturity date payments on principal falling due prior to or within thirty days after initial disbursement and provide for the coincidence of principal and interest payments.

f. Designate proxies to vote at stockholders' meetings on stock held as collateral, and determine how such shares are to be voted.

g. Reinstate terms of payment provided in the borrower's note upon cancellation of authority to foreclose, termination of litigation, or correction of any other situation which caused the loan to be classified as a problem loan.

h. Effect the purchase of the Administration's agreed portion of a participation loan upon the request of the participating institution, consent to the sale to another institution of the SBA portion of a participation loan, and to cancel any deferred participation agreement upon request of the institution.

14. To take the following actions in the administration of fisheries' loans:

a. Amend loan authorizations.

b. Extend the period of disbursement of loans of \$50,000 or less for a period not to exceed four months.

c. Amend the hull insurance provision of any authorization issued prior to January 31, 1958, for a loan of \$10,000 or less.

d. Cancel loan authorizations prior to disbursement upon the written request of the applicant.

e. Disburse fisheries' loans in the same manner as SBA business loans.

f. Administer fisheries' loans within the same authority exercised with respect to SBA loans.

15. To take the following actions in all loans except those loans classified as "problem loans" or "in liquidation":

a. Extend to the maturity of a loan or to a date prior to the maturity, one monthly principal payment in any calendar year, and not more than a total of four such payments during the term of the loan, or one quarterly principal installment payment during the term of the loan, for loans with principal balances not exceeding \$100,000.

b. Carry loans which are delinquent or past-due not more than three months in such status for an additional period of not more than six months when the principal balances of such loans do not exceed \$100,000.

c. Extend the maturity of loans (within the statutory limitations) when the principal balances of such loans do not exceed \$100,000.

d. Approve or decline requests for changes in the repayment terms of notes for loans with principal balances not exceeding \$100,000.

e. Waive amounts due under net earnings clause.

f. Approve requests to exceed fixed assets limitations and waive violations of this limitation.

g. Approve payment of cash or stock dividends, payment of bonuses, increases in salaries, employment of new personnel, and waivers of violation of salary and bonus limitations, provided the Branch Manager considers the bonuses and/or salary to be paid reasonable and that consent will not be given to any such payment if the payment will impair the borrower's cash position and if the loan is not current in all respects at the time the payment is made.

h. Approve changes in use of loan proceeds in connection with partially disbursed loans.

i. Waive violations of agreements to maintain working capital of a specified amount.

16. To extend, or consent to the extension of, the maturity date of time of payment, to change, or consent to the change of, the rate of interest, and otherwise alter or modify, or consent to the alteration or modification of any note, bond, mortgage or other evidence of indebtedness, and any contract for the sale or lease of real or personal property.

17. To accept and join with others in the acceptance of resignations of trustees under declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is a holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

18. To remove and join with others in the removal of any trustee or trustees under any declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator now or hereafter is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is the holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

19. To select and designate persons or corporations as original, substitute or successor trustees under declarations of trust, trust indentures, deeds of trust or other trust instruments or agreements under which the Small Business Administration or its Administrator now or hereafter is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is the holder of any note, bond or instrument issued pursuant thereto and secured thereby to accept on behalf of Small Business Administration or its Administrator beneficial interests in real or personal property.

20. To appoint, consent to or approve of the appointment and join with others in the appointment, consent or approval of appointment of substitute and successor trustee or trustees under any declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator

now or hereafter is a beneficiary and where the Small Business Administration or its administrator now or hereafter is the holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

21. To do and to perform all and every act and thing requisite, necessary and proper to be done for the purpose of effecting the granted powers, including, but without limiting the generality of the foregoing, the execution and delivery of quit claim, bargain and sale or special warranty deeds, leases, subleases, assignments, subordinations, satisfaction pieces, affidavits, and such other documents as may be appropriate or necessary to effectuate the foregoing, and ratifying and confirming all that said Regional Director shall lawfully do or cause to be done by virtue hereof.

22. To take peaceable custody of collateral, as mortgages in possession thereof or otherwise, whenever such action becomes necessary to protect the interests of or a loan made by SBA; to take all steps necessary for the preservation and protection of the property, pending foreclosure of the lien and sale of the collateral; and, to obligate the Administration in an amount not in excess of a total of \$1,000 for any one loan, for those expenditures as may be required to accomplish these purposes.

23. To enter into written arrangements with custodians or caretakers of collateral covering their services, which shall not have the effect of making such persons employees of SBA but shall be limited to their temporary services for the specific purpose involved.

24. To enter into written arrangements with owners of premises, when it is necessary to use a building not part of the loan collateral for the storage of chattels pending foreclosure and sale for a period of not more than 90 days, including a period of 10 days after the date of sale of the collateral to permit orderly removal of the property from the premises.

25. To post indemnity or other bonds in proceedings in cases where such undertakings are required by State law.

26. To foreclose, by summary foreclosure proceedings where State law permits and in accordance with State laws, in whole or in part, any chattel mortgage, real estate mortgage, deed of trust, security deed or collateral whatsoever kind or nature, securing any note, bond or other evidence of indebtedness now held or hereafter acquired by the Small Business Administration or its Administrator as pledgee, owner or otherwise, and to exercise any rights or authority which the Small Business Administration or its Administrator has or may have pursuant to the terms of such security instrument or evidence of indebtedness, and to assign all the right, title and interest of the Small Business Administration or its Administrator in and to any terms of sale or bid made at any such foreclosure sale.

*Procurement and technical assistance.* To take the following actions in accordance with the limitations of such delegations set forth in SBA-400, Agency

Policy Manual, and SBA-600, Procurement and Technical Assistance Manual:

27. To develop with Government procurement agencies required local procedures for implementing established inter-agency policy agreements, including but not limited to steps such as determining joint set-asides and representation at procurement centers.

*Administrative.* 28. To administer oaths of office.

29. To approve annual and sick leave for employees under his supervision.

*Correspondence.* To sign all non-policy making correspondence relating to the financial assistance functions as specified in the above delegated authorities.

II. The authority in I.B. 1. through I.B. 12. and I.B. 14. through I.B. 26. may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Manager of the Charlotte Branch Office.

IV. All previous authority delegated by the Regional Director to the Manager of the Charlotte Branch Office is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to the date hereof.

Dated: February 13, 1959.

CLARENCE P. MOORE,  
Regional Director,  
Richmond Regional Office.

[F.R. Doc. 59-2244; Filed, Mar. 16, 1959;  
8:47 a.m.]

## INTERSTATE COMMERCE COMMISSION

[No. 32809]

### ARIZONA INTRASTATE FREIGHT RATES AND CHARGES

#### Notice of Investigation and Hearing

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 19th day of February A.D. 1959.

It appearing, that in Ex Parte No. 206, Increased Freight Rates, Eastern, Western and Southern Territories, 1956, 300 I.C.C. 633, and in Ex Parte No. 212, Increased Freight Rates, 1958, 302 I.C.C. 665; 304 I.C.C. 289, the Commission authorized carriers subject to the Interstate Commerce Act parties thereto to make certain increases in their freight rates and charges for interstate application throughout the United States, and that increases under such authorizations have been made;

It further appearing, that a petition dated January 19, 1959, has been filed on behalf of The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company, common carriers by railroad operating to, from and between points in the State of Arizona, averring that the Arizona Corporation Commission has failed to authorize or permit increases in rates and charges on intrastate traffic corresponding to the increases authorized by this Commission in the above-cited proceedings on

interstate traffic, alleging that such refusal causes and results in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and in undue, unreasonable and unjust discrimination against interstate commerce in violation of section 13 of the Interstate Commerce Act;

It further appearing, that petitioners desire to except from the relief here sought the class rates on less-than-carload intrastate traffic between points in Arizona served by the Southern Pacific Company;

And it further appearing, that there have been brought in issue by the said petition rates and charges made or imposed by authority of the State of Arizona:

*It is ordered,* That in response to the said petition an investigation be, and it is hereby, instituted and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested to determine whether the rates and charges of the common carriers by railroad, or any of them, operating in the State of Arizona, for the intrastate transportation of property, made or imposed by authority of the State of Arizona, with the exception of class rates on less-than-carload intrastate traffic between points in Arizona served by the Southern Pacific Company, cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those permitted by this Commission for interstate traffic in Ex Parte No. 206 and Ex Parte No. 212, supra, any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against or undue burden on interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum, rates and charges shall be prescribed to remove the unlawful advantage, preference, prejudice, discrimination, or undue burden, if any, that may be found to exist;

*It is further ordered,* That all common carriers by railroad operating within the State of Arizona, subject to the jurisdiction of this Commission, be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the said respondents, and that the State of Arizona be notified of the proceeding by sending copies of this order and of said petition by registered mail to the Governor of the said State and to the Arizona Corporation Commission at Phoenix, Ariz.;

*It is further ordered,* That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C.; for public inspection, and by filing a copy with the Federal Register Division, Washington, D.C.;

*And it is further ordered,* That this proceeding be assigned for hearing at

such time and place as the Commission may hereafter designate.

By the Commission, Division 2.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 59-2248; Filed, Mar. 16, 1959;  
8:47 a.m.]

[Notice 96]

**MOTOR CARRIER TRANSFER  
PROCEEDINGS**

MARCH 12, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder. (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 61492. By order of February 27, 1959, The Transfer Board approved the transfer to Frank Beelman, Jr., St. Libory, Ill., of Certificate No. MC 101432, issued January 2, 1942, to Joseph A. Rutter, doing business as Rutter Store Co., St. Libory, Ill., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between St. Libory, Ill., and St. Louis, Mo., with no service authorized to or from intermediate points. Ernest A. Brooks II, 1301 Ambassador Building, St. Louis 1, Mo., for applicants.

No. MC-FC 61644. By order of February 27, 1959, The Transfer Board approved the transfer to Ranger Transport Corp., New York, N.Y., of Certificate No. MC 43274 issued March 17, 1958, to James V. Meceli, Port Chester, N.Y., authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and other specified commodities, over an irregular route between Bloomfield, Hoboken, and Jersey City, N.J., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, and Union Counties, N.J.; between points in Bergen, Burlington, Camden, Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Monmouth, Passaic, Somerset, and Union Counties, N.J., on the one hand, and, on the other, points in the New York, N.Y. Commercial Zone; and between points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, N.J., and points in the New York Commercial Zone, on the one hand, and on the other, Manchester, Conn., points in that part of Connecticut on and west of U.S. Highway 5, Philadelphia, Pa., and points in that

part of Delaware County, Pa., on and east of U.S. Highway 202. Edward L. Amsel, Brooklawn Drive, Westport, Conn., for transferee. James Santamauro, Hampdon, Conn., for transferor.

No. MC-FC 61730. By order of February 27, 1959, The Transfer Board approved the transfer to Aster Trucking Corp., Buffalo, N.Y., of Certificate No. MC 62234 Sub 1, issued July 17, 1952, in the name of James I. Moorhead and Robert S. Moorhead, a partnership, doing business as Moorhead Brothers, North East, Pa., authorizing the transportation, over irregular routes, of clay products, from points in Clarion County, Pa., to points in that part of New York south and west of Oswego County and west of Onondago, Cortland, and Broome Counties, N.Y.; flour and other mill products, and feed, from Buffalo, N.Y., to points in twenty counties in Pennsylvania; coal, from New Bethlehem, Pa., and points within 10 miles thereof to Hamburg and Jamestown, N.Y., and points in New York within 10 miles of Jamestown; fertilizer, from Buffalo, N.Y., to points in Armstrong, Clarion, Indiana, and Jefferson Counties, Pa. James P. Bryan, 1206 Baldwin Building, Erie, Pa., for applicants.

No. MC-FC 61826. By order of February 27, 1959, The Transfer Board approved the transfer to Ferree Moving and Storage, Inc., Hammond, Ind., of a portion of Certificate No. MC 106181, issued May 7, 1956, to Wood and Myers Truck Line, Inc., South Haven, Mich., authorizing the transportation of: household goods, as defined by the Commission, between points in Michigan, Indiana, and Illinois. Carl L. Steiner, 39 South LaSalle Street, Chicago 3, Ill., for applicants.

No. MC-FC 61828. By order of February 27, 1959, The Transfer Board approved the transfer to Walter Taylor, Paul Peel, Herman Brinegar and F. S. Masterson, a partnership, doing business as Phillips Coach Lines Company, 102 Oak Street, Nicholasville, Ky., of Certificates in Nos. MC 36290 and MC 36290 Sub 1, issued April 16, 1942, and August 15, 1939, respectively, to Otis Phillips, doing business as Phillips Coach Line, 102 Oak Street, Nicholasville, Ky., authorizing the transportation of: Passengers and their baggage, and express and newspapers in the same vehicles with passengers, between Lexington, Ky., and Wilmore, Ky., and passengers and their baggage, in charter operations, from points in Jessamine, Boyle, and Mercer Counties, Ky., to New York, N.Y., and return.

No. MC-FC 61832. By order of February 27, 1959, The Transfer Board approved the transfer to Caveman Transport, Inc., Grants Pass, Ore., of Certificates Nos. MC 116375 and MC 116375 Sub 2, issued July 18, 1957 and July 2, 1958, respectively, to Charles Buckel, Springfield, Ore., authorizing the transportation of: Lumber, from points in Lane and Linn Counties, Ore., to points in Nevada, and ore, from points in California on and north of U.S. Highway 40 to points in Lane County, Ore. I. R. Perry, P.O. Box 594, Grants Pass, Ore., for applicants.

No. MC-FC 61844. By order of February 27, 1959, The Transfer Board approved the transfer to Buckner Transfer & Storage Company, Inc., 2301 Mills Street, El Paso, Texas, of Certificate in No. MC 40485, issued May 29, 1941, to J. H. Buckner, doing business as Buckner Transfer Co., 2301 Mills Street, El Paso, Texas, authorizing the transportation of: *General Commodities*, with the usual exceptions including household goods and commodities in bulk, from El Paso, Texas, to points within seven miles of the El Paso County Court House, El Paso, Texas.

No. MC-FC 61936. By order of February 27, 1959, The Transfer Board approved the transfer to Herbert C. Gough, Jr., doing business as H. C. Gough & Son Transfer, Baltimore, Md., of Permits Nos. 60160 and MC 60160 Sub 1, issued September 2, 1943 and July 24, 1945, respectively, in the name of Herbert C. Gough and Herbert C. Gough, Jr., a partnership, doing business as Herbert C. Gough & Son Transfer, Baltimore, Md., authorizing the transportation, over irregular routes, of malt beverages, from Baltimore, Md., to Alexandria, Va., Wilmington, Del., Washington, D.C., and Richmond, Va.; empty malt beverage containers, from Alexandria, Va., Wilmington, Del., Washington, D.C., Richmond, Va., to Baltimore, Md.; scrap metal, from Baltimore, Md., to Philadelphia, Pa.; and lumber and gas filters, from Baltimore and Sparrows Point, Md., to New York, N.Y. Return with no transportation for compensation except as otherwise authorized, to Baltimore and Sparrows Point. Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C., for applicants.

No. MC-FC 61991. By order of February 27, 1959, The Transfer Board approved the transfer to C-M-D Transport, Inc., Vernon, California, of a Certificate in No. MC 105537, issued June 2, 1954, to West Coast Warehouse Corporation, Long Beach, California, authorizing the transportation of sugar, chili pods, dried, cotton bale ties, and jute bagging, and general commodities, household goods, as defined by the Commission, and commodities in bulk, and other specified commodities, from, to, and between, specified points in California. R. Y. Schureman, Glanz & Russell, 639 South Spring Street, Los Angeles 14, California.

No. MC-FC 62003. By order of February 27, 1959, The Transfer Board approved the transfer to Daniel Clapps and Anthony Clapps, a partnership, doing business as The Ellis Motor Lines, Torrington, Connecticut, of a portion of certificate in No. MC 21090 issued March 6, 1941, to Nyack Express Company, Inc., Nyack, New York, authorizing the transportation of general commodities, not including household goods, as defined by the Commission, commodities in bulk, and other specified commodities, between points in Orange, Rockland, Sullivan, and Westchester Counties, N.Y., on the one hand, and, on the other, New York, N.Y., and points in Bergen, Essex, Hudson, and Passaic Counties, N.J., and between New York, N.Y., on the one hand, and, on the other, points in Bergen and Passaic Counties, N.J. John L. Collins,

Steele, Collins & Maxwell, 50 State Street, Hartford 3, Connecticut.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 59-2249; Filed, Mar. 16, 1959; 8:48 a.m.]

**FOURTH SECTION APPLICATIONS FOR RELIEF**

MARCH 12, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

**LONG-AND-SHORT HAUL**

FSA No. 35294: *Phosphate rock—Florida mines to Roelyn, Iowa.* Filed by O. W. South, Jr., Agent (SFA No. A3782), for interested rail carriers. Rates on phosphate rock, carloads from specified points in Florida to Roelyn, Fla.

Grounds for relief: Short line distance formula.

Tariff: Supplement 125 to Southern Freight Tariff Bureau tariff I.C.C. 1514.

FSA No. 35295: *Phosphate rock—Florida mines to Louisiana and Texas points.* Filed by O. W. South, Jr., Agent (SFA No. A3781), for interested rail carriers. Rates on phosphate rock, carloads from mines in Florida to specified points in Louisiana and Texas.

Grounds for relief: Rail-barge-rail competition.

Tariff: Supplement 125 to Southern Freight Tariff Bureau tariff I.C.C. 1514.

FSA No. 35296: *Soda ash—Saltville, Va., to Nashville, Tenn.* Filed by O. W.

South, Jr., Agent (SFA No. A3780), for interested rail carriers. Rates on soda ash, in bulk in bags, carloads from Saltville, Va., to Nashville, Tenn.

Grounds for relief: Market competition in connection with like property from Baton Rouge and North Baton Rouge, La.

Tariff: Supplement 101 to Southern Freight Tariff Bureau tariff I.C.C. 1538.

FSA No. 35297: *Substituted service—C. & O. Ry., for Hennis Freight Lines, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 2), for the Chesapeake and Ohio Railway Company and interested motor carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago, Ill., on the one hand, and Cincinnati, Ohio, or Detroit, Mich., on the other, on traffic originating at or destined to points on motor carriers beyond the named points.

Grounds for relief: Motor-truck competition.

Tariff: Central and Southern Motor Freight Tariff Association, Incorporated, tariff MF-I.C.C. No. 198.

FSA No. 35298: *Substituted service—C. & O. Ry., for Smith Transfer Corp.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 3), for the Chesapeake and Ohio Railway Company, Smith Transfer Corporation and other motor carriers referred to in the application. Rates on property loaded in highway trailers and transported on railroad flat cars between Staunton, Va., on the one hand, and Charleston, W. Va., on the other on traffic originating at or destined to points on motor carriers beyond the named points.

Grounds for relief: Motor-truck competition.

Tariff: Central and Southern Motor Freight Tariff Association tariff MF-I.C.C. No. 198.

By the Commission.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 59-2250; Filed, Mar. 16, 1959; 8:48 a.m.]

**DEPARTMENT OF JUSTICE**

Office of Alien Property

GERTRUDE LANGER

**Notice of Intention To Return Vested Property**

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Gertrude Langer, nee Schmidt, Wuerttemberg, Germany; Claim No. 66431; \$2,702.50 in the Treasury of the United States. Vesting Order No. 19274.

Executed at Washington, D.C., on March 9, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F.R. Doc. 59-2252; Filed, Mar. 16, 1959; 8:48 a.m.]

**CUMULATIVE CODIFICATION GUIDE—MARCH**

A numerical list of the parts of the Code of Federal Regulations affected by documents published to date during March. Proposed rules, as opposed to final actions, are identified as such.

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# FEDERAL REGISTER

VOLUME 24

NUMBER 52

Washington, Tuesday, March 17, 1959

## Title 41—PUBLIC CONTRACTS

### Chapter I—Federal Procurement Regulations

#### Introduction.

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1-2 Procurement by formal advertising.  
1-3 Procurement by negotiation.  
1-7 Contract clauses.  
1-11 Federal, State, and local taxes.  
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AUTHORITY: Part 1-1 to Part 1-16 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

#### INTRODUCTION

1. *Establishment of Federal Procurement Regulations System.* The Chapter I of this Title 41 establishes a new Federal Procurement Regulations System. Its application to the Department of Defense is limited to the extent stated in paragraph 5 of this Introduction. The System consists of two major elements: (a) procurement policies and procedures for Government agencies prescribed by the Administrator of General Services in the "Federal Procurement Regulations" (FPR), and (b) the publication of agency implementing regulations in succeeding chapters of Title 41, including the gradual transfer to such succeeding chapters of existing agency regulations affecting procurement. Ultimately, Government procurement regulations will be contained in the same title of the Code of Federal Regulations for convenient utilization by both the public and the Government personnel. Greater consistency in agency procurement regulations is anticipated under this System.

2. *Background.* The System is an outgrowth of recommendations of the President's Cabinet Committee on Small Business and the work of the interagency Task Force for Review of Government Procurement Policies and Procedures, which was established by the Administrator of General Services pursuant to a Presidential directive of September 26, 1956. The System is intended to promote the objectives of eliminating needless inconsistencies between agency procurement regulations, minimizing complexities and inequities in procurement

policies and procedures, and making agency procurement regulations more readily available to businessmen and others concerned.

3. *Other procurement regulations.* Procurement agencies are expected to issue, in the FEDERAL REGISTER, significant agency procurement policies and procedures which implement or supplement the Federal Procurement Regulations, in order that business concerns and others interested may be informed of these policies and procedures. These regulations as prepared for the FEDERAL REGISTER will be in conformity with Federal Procurement Regulations style, arrangement, and numbering sequence, in order to facilitate their use. Further instructions for agency implementation will be furnished later.

4. *Effect on existing GSA regulations.* Existing GSA Governmentwide procurement regulations will gradually be transferred to FPR (Chapter I). To this end, certain GSA regulations pertaining to procurement contained in Title 44 of the Code of Federal Regulations have been today repealed or superseded, as shown elsewhere in this issue of the FEDERAL REGISTER.<sup>1</sup>

5. *Relationship to the Department of Defense.* While the Federal Procurement Regulations are applicable to all executive agencies, they are not made mandatory on the Department of Defense, except with respect to matters concerning standard Government forms and clauses, Federal Specifications and Standards, and except as directed by the President, Congress, or other authority. Therefore, the extent of implementation of FPR by the Department of Defense and participation in the System will be determined by that Department. However, coordination with that Department in the development and issuance of these regulations is contemplated.

6. *Availability of the FPR.* The Federal Procurement Regulations will be published in the FEDERAL REGISTER. They will also be published in loose-leaf volume form. The Regulations will be available in both forms from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., at nominal cost. All agency procurement

regulations (as well as FPR) published in Title 41 may be obtained from the Superintendent of Documents through an annual subscription to the FEDERAL REGISTER, and an annual accumulation of these regulations may be obtained from the same source by purchase of the volume containing Title 41 of the Code of Federal Regulations.

7. *Publishing technique.* A unique feature of the FPR is its publication in the loose-leaf volume in a form which permits its publication in the FEDERAL REGISTER without necessity for editorial rearrangement. Agencies implementing the FPR may employ the same technique with resultant economies and administrative simplicity.

8. *Program for completing FPR.* The Federal Procurement Regulations program contemplates the issuance by the Administrator of General Services of a comprehensive set of procurement policies and procedures which will be developed and published in the months to come, and thereafter be revised as needed. This issue of the FEDERAL REGISTER contains a substantial portion of the regulatory material for inclusion in FPR. It is expected that initial publication of the Federal Procurement Regulations will be substantially completed within the next 12 months.

9. *Delegation of authority.* There is today issued in the Notices Section of the FEDERAL REGISTER<sup>2</sup> a general delegation to executive agencies of authority to use Title III of the Federal Property and Administrative Services Act of 1949. The delegation will enable agencies to utilize fully the policies and procedures set forth in Part 1-3 of the Federal Procurement Regulations. This will assure a greater degree of uniformity in such matters, as contemplated by the recent enactment of Public Law 85-800 which specifically contemplated this delegation. Agencies utilizing Title III of the Act for negotiated contracts may do so only subject to the safeguards, limitations, and controls of Part 1-3.

10. *Suggestions solicited.* As noted in paragraph 11 of this Introduction, the new regulatory material becomes mandatory approximately six months from the date hereof. This will allow agencies and

<sup>1</sup> See F.R. Doc. 59-2301 in Part I of this issue.

<sup>2</sup> See F.R. Doc. 59-2302 in Part I of this issue.

the public adequate opportunity to appraise them and submit recommendations for any needed improvement.

11. *Effective dates of regulatory material.* The FPR material contained in this issue of the FEDERAL REGISTER represents (1) a codification of regulations previously prescribed by the Administrator of General Services which either have been in effect or which, by their terms, have not yet become effective; and (2) new regulatory material not heretofore issued. Therefore, the effective dates of portions of these regulations will vary accordingly. The following specific portions will become effective as indicated below.

(a) *These portions are effective immediately:*

Subpart 1-1.0.

Subpart 1-1.5 (GSA General Regulation 12, Dec. 12, 1952, is rescinded insofar as it applies to "procurement" as defined in FPR).

Subpart 1-1.6 (GSA General Regulation 15, June 17, 1954, and Supplement No. 1, Aug. 19, 1954, are rescinded).

Subpart 1-1.7 (GSA General Regulation 21, Jan. 30, 1959, is rescinded).

Part 1-3, excluding Subpart 1-3.6, where agencies negotiate contracts under the general delegation of authority referred to in paragraph 9 above.

Subpart 1-11.4 (GSA Reg. 1-II-209.03b is rescinded).

Subpart 1-16.1 (GSA Reg. 1-II-209.02 is rescinded).

Subpart 1-16.8 (GSA General Regulation 5, Dec. 19, 1950, insofar as it applies to "procurement" as defined in FPR, and GSA Reg. 1-II-214.00 are rescinded).

(b) *These portions are effective June 1, 1959:*

Section 1-1.307 (GSA Reg. 1-II-201.04 is rescinded).

Section 1-1.310 (GSA Reg. 1-II-210.02 and GSA General Regulation 24, Mar. 6, 1959, are rescinded).

Section 1-1.315 (GSA General Regulation 23, Mar. 6, 1959, is rescinded).

Subpart 1-2.3 (GSA General Regulation 22, Feb. 2, 1959, is rescinded).

Subpart 1-16.4 (GSA General Regulation 13, Mar. 19, 1953, Supplements Nos. 1 and 2, June 19, 1953 and July 31, 1957, respectively, and GSA General Regulation 13, Revised, Jan. 29, 1959, are rescinded).

(c) *These portions are effective September 15, 1959:*

Subpart 1-1.2.

Subpart 1-1.3, except for sections indicated in (b) above.

Subpart 1-1.9.

Part 1-3, except as indicated in (a) above (GSA Reg. 1-II-211.00 and 217.00 are rescinded).

Subpart 1-7.1.

Part 1-11, except Subpart 1-11.4.

Part 1-12.

Subpart 1-16.3.

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## § 1-1.000 Scope of part.

This part sets forth policies and procedures concerning: the Federal Procurement Regulations System; definition of terms used throughout this chapter; general policies of procurement; contingent fees; debarred and ineligible bidders; small business concerns; and reporting possible antitrust violations.

## Subpart 1-1.0—Regulation System

## § 1-1.001 Scope of subpart.

This subpart sets forth introductory information pertaining to the Federal Procurement Regulations System; its purpose, authority, applicability, issuance, arrangement, implementation, and deviation procedure.

## § 1-1.002 Purpose.

This subpart establishes the Federal Procurement Regulations System for the codification and publication of uniform policies and procedures applicable to the procurement of personal property and nonpersonal services (including construction) by executive agencies, except as limited by the provisions of section 1-1.004 with respect to the Department of Defense. The System includes regulations prescribed by the Administrator of General Services, called the Federal Procurement Regulations (FPR), as well as individual agency procurement regulations which implement and supplement the FPR.

## § 1-1.003 Authority.

The Federal Procurement Regulations System is prescribed by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, and the FPR are developed in cooperation with the procurement agencies and are issued by him under the Act or other authority specially cited.

## § 1-1.004 Applicability.

Federal Procurement Regulations apply to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949 or in other law. Except for standard Government forms and clauses, Federal Specifications and Standards, and except as directed by the President, Congress, or other authority, these Regulations are not mandatory on the Department of Defense. Therefore, the extent of their implementation within the Department of Defense and participation in the System will be determined by that Department. The Regulations apply to procurements made within and outside the United States unless otherwise specified.

## § 1-1.005 Exclusions.

Certain Governmentwide policies and procedures which come within the scope of this chapter nevertheless may be excluded from Federal Procurement Regu-

lations. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Policy or procedure which is expected to be effective for a period of less than six months.

(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.

## § 1-1.006 Issuance.

## § 1-1.006-1 Code arrangement.

Federal Procurement Regulations are issued in the Code of Federal Regulations as Chapter I of Title 41, Public Contracts. Succeeding chapters of Title 41 are devoted to implementing and supplementing material developed and issued by particular Federal agencies to govern their procurement activities, as well as regulations of general application to procurement agencies issued by other Federal regulatory agencies, such as the Department of Labor under the Walsh-Healey Public Contracts Act.

## § 1-1.006-2 Publication.

Federal Procurement Regulations are published (in Title 41) in the daily issue of the FEDERAL REGISTER, in cumulated form in the Code of Federal Regulations, and in separate loose-leaf volume form.

## § 1-1.006-3 Copies.

Copies of Federal Procurement Regulations in Federal Register and Code of Federal Regulations form may be purchased by Federal agencies and the public, at nominal cost, from the Superintendent of Documents, Government Printing Office, Washington 25, D.C. Copies of Federal Procurement Regulations in loose-leaf volume form may be obtained by Federal agencies from the General Services Administration, in a very limited quantity, and may be purchased by the public from the Superintendent of Documents.

## § 1-1.006-4 Coordination.

In the development of Federal Procurement Regulations, there will be solicited the views of interested Federal agencies and, where appropriate and feasible, the views of interested business and professional organizations. The Regulations will be coordinated with the Small Business Administration to assure adequate consideration of small business interests.

## § 1-1.007 Arrangement.

## § 1-1.007-1 General plan.

The general plan, numbering system, and nomenclature used in the Federal Procurement Regulations conform with Federal Register standards approved for the FPR.

## § 1-1.007-2 Numbering.

The numbering system permits identification of every unit. The first digit represents the chapter number allocated to each agency, followed by a dash. This is followed by the part number which may be one or more digits followed by a decimal point. The numbers after the decimal point represent, respectively, the subpart, section (in two

digits), and, after the dash, subsection, paragraph, subparagraph, and further inferior divisions. For example, this division is called "section 1-1.007-2," in which the first digit denotes the chapter, the second the part, the third the subpart, the fourth and fifth the section, and the sixth the subsection.

## § 1-1.007-3 Citation.

Federal Procurement Regulations will be cited in accordance with Federal Register standards approved for the FPR. Thus, this section, when referred to in divisions of the Federal Procurement Regulations, should be cited as "section 1-1.007-3 of this chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 1-1.007-3." Any section of Federal Procurement Regulations may be informally identified, for purposes of brevity, as "FPR" followed by the section number, such as "FPR 1-1.007-3."

## § 1-1.008 Agency implementation.

As portions of FPR material are prescribed, agencies shall publish in the FEDERAL REGISTER implementing regulations deemed necessary for business concerns, and others properly interested, to understand basic and significant agency procurement policies and procedures which implement, supplement, or deviate from the FPR. Detailed instructions of interest primarily for internal agency guidance need not be published. Implementing regulations shall be prepared to conform with FPR style and arrangement.

## § 1-1.009 Deviation.

## § 1-1.009-1 Description.

As used in these Regulations, the term "deviation" includes any of the following actions:

(a) When a prescribed contract clause is set forth verbatim, use of a contract clause covering the same subject matter which varies from that set forth.

(b) When a standard or other form is prescribed, use of any other form for the same purpose.

(c) Alteration of a prescribed standard or other form, except as may be authorized in the Regulations.

(d) The imposition of lesser or, where the regulation expressly prohibits, greater limitations than are imposed upon the use of a contract clause, form, procedure, type of contract, or upon any other procurement action, including but not limited to, the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration, or settlement of contracts.

(e) When a policy or procedure is prescribed, use of any inconsistent policy or procedure.

## § 1-1.009-2 Procedure.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the Federal Procurement Regulations shall be kept to a minimum and controlled as follows:

(a) The head of each agency exercising procurement authority shall pre-

scribe a formal procedure for the control of deviations within the agency. A copy of the procedure shall be furnished to the General Services Administration.

(b) In individual cases, deviations may be authorized by the head of the agency or the officers designated by him for this purpose, in accordance with procedures established by the agency. In each instance the file shall disclose the nature of the deviation and the reasons for such special action.

(c) Deviations in classes of cases shall be considered on an expedited basis jointly by the agency desiring the deviation and the General Services Administration unless, in the considered judgment of the agency and with due regard to the objective of uniformity, circumstances preclude such joint effort. In such case, GSA will be notified of the deviation.

(d) Except as otherwise authorized, when any deviation in a contract form provision is authorized, physical change may not be made in the printed form but shall be made by appropriate provision in the schedule, specifications, or continuation sheet, as provided in agency procedures.

#### Subpart 1-1.1—[Reserved]

#### Subpart 1-1.2—Definition of Terms

##### § 1-1.201 Definitions.

For the purposes of this chapter, and unless otherwise indicated, the following terms have the meanings set forth in this subpart.

##### § 1-1.202 Executive agency.

"Executive agency" means any executive department (including the Departments of the Army, the Navy, and the Air Force) or any independent establishment in the executive branch of the Government, including any wholly-owned Government corporation.

##### § 1-1.203 Federal agency.

"Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

##### § 1-1.204 Head of the agency.

"Head of the agency" means the Secretary, Attorney General, Postmaster General, Administrator, Governor, Chairman, or other chief official of an executive agency, unless otherwise indicated, including the assistant chief official of an executive agency and, for the military departments, the Under Secretary and Assistant Secretary of the Departments of the Army, Navy, and Air Force.

##### § 1-1.205 Procuring activity.

"Procuring activity" means the organizational element of an executive agency which has responsibility to contract for the procurement of personal property and nonpersonal services (including construction).

##### § 1-1.206 Head of the procuring activity.

"Head of the procuring activity" means that official, intermediate between the head of the agency and the contracting officer, who has the responsibility for supervision and direction of the procuring activity.

##### § 1-1.207 Contracting officer.

"Contracting officer" means an official designated to enter into or administer contracts and make related determinations and findings.

##### § 1-1.208 Contract.

"Contract" means establishment of a binding legal relation basically obligating the seller to furnish personal property or nonpersonal services (including construction) and the buyer to pay therefor. It includes all types of commitments which obligate the Government to an expenditure of funds and which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

##### § 1-1.209 Procurement.

"Procurement" means the acquisition (and directly related matters), from non-Federal sources, of personal property and nonpersonal services (including construction) by such means as purchasing, renting, leasing, contracting, or bartering, but not by seizure, condemnation, donation, or requisition.

##### § 1-1.210 Supplies.

"Supplies" means procurement items as defined in section 1-1.220.

##### § 1-1.211 Manufacturer.

"Manufacturer" means a person (or firm):

(a) Who owns, operates, or maintains a factory or establishment that produces on the premises the materials, articles, or equipment required under the contract and of the general character described by the specifications; or

(b) Who, if newly entering into a manufacturing activity, has made all necessary prior arrangements for manufacturing space, equipment, and personnel, to perform the manufacturing operations required for contract performance; and

(c) Who, before being awarded a contract, satisfies the contracting officer that it qualifies under (a) or (b) of this section.

##### § 1-1.212 Regular dealer.

(a) "Regular dealer" means a person (or firm):

(1) Who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, articles, or equipment of the general character

described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business; or

(2) In the case of articles of particular kinds (lumber and timber products, coal, machine tools, raw cotton, petroleum, green coffee, tea, agricultural liming materials, or hay, grain, feed, or straw), who satisfies the requirements of the Regulations of the Secretary of Labor (41 CFR 201.101(b) and 201.603(f)) under the Walsh-Healey Public Contracts Act; and

(3) Who, before being awarded a contract, satisfies the contracting officer that it is engaged in an established regular business meeting all the criteria of (1) or (2) of this paragraph (a).

(b) It is not enough in the case of a regular dealer to show only that arrangements have been made to set up such a business. Before an award can be made, the dealer must show that it is an established going business regularly dealing in the particular articles, or articles of the general character, sought by the Government.

##### § 1-1.213 Construction contractor.

"Construction contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

(a) Who owns, operates, or maintains a place of business, regularly engaged in the construction, alteration, or repair of buildings, structures, communication facilities, or other engineering projects, including the furnishing and installing of necessary equipment; or

(b) Who, if newly entering into a construction activity, has made all necessary prior arrangements for personnel, construction equipment, and required licenses to perform construction work.

##### § 1-1.214 Service contractor.

"Service contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

(a) Who owns, operates, or maintains a place of business, regularly engaged in performing nonpersonal services, such as the repair, maintenance, or rebuilding of personal property; the packing, crating, or moving of material; the operation of equipment or facilities; the rental of equipment or facilities; or the performance of administrative, professional, or technical functions; or

(b) Who, if newly entering into a service activity, has made all necessary prior arrangements for personnel, service equipment, and required licenses to perform services.

##### § 1-1.215 Government instrumentality.

"Government instrumentality" means any of the following:

(a) An instrumentality of the U.S. Government.

(b) An agency or instrumentality of a State or local government thereof, Hawaii, possession, or Puerto Rico.

(c) An agency or instrumentality of a foreign government.

### § 1-1.216 United States.

"United States", when used in a geographic sense, means the States and the District of Columbia.

### § 1-1.217 Possessions.

"Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Wake Island, Midway Island, and the guano islands, but does not include Hawaii or the Commonwealth of Puerto Rico.

### § 1-1.218 Negotiation.

"Negotiation" means the procedure for making contracts without formal advertising.

### § 1-1.219 Contract modification.

"Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes (a) bilateral actions, such as supplemental agreements and amendments, and (b) unilateral actions, such as change orders, notices of termination, and notices of the exercise of an option.

### § 1-1.220 Procurement item.

"Procurement item" means any personal property or nonpersonal service, including construction, alteration, repair, or installation, which is the object of procurement.

## Subpart 1-1.3—General Policies

### § 1-1.300 Scope of subpart.

This subpart sets forth general policies with respect to (a) methods of procurement; (b) procurement sources; (c) types of contracts; (d) use of specifications, standards, and purchase descriptions; (e) transportation costs; and (f) priorities, allocations, and allotments.

### § 1-1.301 Methods of procurement.

It shall be the objective to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered. Procurement shall be made on a competitive basis, whether by formal advertising or by negotiation, to the maximum practicable extent, in accordance with the policies and procedures set forth in this chapter. Procurement shall be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder, except that when authorized procurement may be effected by negotiation in accordance with Part 1-3 of this chapter.

### § 1-1.302 Procurement sources.

#### § 1-1.302-1 General.

(a) Before taking procurement action, in accordance with this chapter, agencies shall have complied with applicable laws and regulations relative to obtaining supplies or services from Government sources and from contracts of other Government agencies. These include excess and surplus stocks in the hands of any Government agency, Federal Supply Schedules, General Services

Administration Stores Stock, Federal Supply Service Consolidated Purchase Programs, Federal Prison Industries, Inc., and National Industries for the Blind.

(b) Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

#### § 1-1.302-2 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) which have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services, or for research and development for defense use or to effectuate the purposes of the Small Business Act, (2) which have entered into a production pool agreement governing their organization, relationship, and procedure, and (3) the agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), or in accordance with sections 9(d) or 11 of the Small Business Act (Small Business Pool). Production pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act and of sections 1-1.211 and 1-1.212.

(b) *General rule.* Except as provided in this section 1-1.302-2, a production pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a production pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the Small Business Administration (SBA) or the Office of Civil and Defense Mobilization (OCDM) notification of approval of the pool. Each executive agency should expeditiously disseminate to appropriate contracting officers information received from SBA or OCDM concerning the approval of production pools.

#### (d) Contracting with pools.

(1) A bid or proposal of a production pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of

the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in its own name the pool agreement shall be considered in determining the pool member's responsibility.

### § 1-1.303 Approval signatures.

Approval signatures on contracts or purchase authorizations should be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they should, where possible, be obtained concurrently.

### § 1-1.304 [Reserved.]

### § 1-1.305 Specifications.<sup>1</sup>

"Specification," as used in this section 1-1.305, is a clear and accurate description of the technical requirements for a material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for items or materials contain also preservation, packaging, packing, and marking requirements. The identification of categories and intended use of such specifications are as follows:

(a) *Federal.* A specification covering those materials, products, or services, used by or for potential use of two or more Federal agencies (at least one of which is a civil agency), or new items of potential general application, promulgated by the General Services Administration and mandatory for use by all executive agencies.

(b) *Interim Federal.* A potential Federal specification issued in interim form, for optional use by agencies. Interim amendments to Federal Specifications are included in this definition.

(c) *Military (MIL).* A specification issued by the Department of Defense, used solely or predominantly by and mandatory on military activities. (This definition includes both fully coordinated and limited coordination military specifications.)

(d) *Departmental.* A specification developed and prepared by, and of interest primarily to a particular Federal civil agency, but which may be of use in procurement by other Federal agencies.

#### § 1-1.305-1 Mandatory use of Federal Specifications.

Federal Specifications shall be used by all executive agencies, including the De-

<sup>1</sup> Other instructions concerning the use of specifications that are of interest and applicable to executive agencies, but which are of no interest to the public, are contained in General Services Administration Regulation 1-VI, Part 2.

partment of Defense, in the procurement of supplies and services covered by such specifications; except as provided in sections 1-1.305-2 and 1-1.305-3.

**§ 1-1.305-2 Exceptions to mandatory use of Federal Specifications.**

Federal Specifications need not be used under the following circumstances:

(a) The purchase is required under a public exigency and a delay would be involved in using the applicable specification to obtain agency requirements.

(b) The total amount of the purchase does not exceed \$2,500. (Multiple small purchases of the same item shall not be made for the purpose of avoiding the intent of this exception.)

(c) The purchase involves items of construction for new processes, new installations of equipment, or items for experiment, test, or research and development, until such time as specifications covering them are issued or it is determined by the General Services Administration, and the procuring agencies notified, that further deviations from the Federal Specifications will not be permitted: *Provided, That*, in connection with such deviations, existing Federal Specifications shall be used to the extent that they are applicable.

(d) The purchase involves spare parts, components, or materials required for repair or maintenance of existing equipment, or for similar items required for maintenance or operation of existing facilities or installations: *Provided, That* existing Federal Specifications shall be used to the extent that they are applicable.

(e) The items are purchased in foreign markets for use of overseas activities of agencies.

(f) An Interim Federal Specification is used by an agency in lieu of the Federal Specification.

(g) Where otherwise authorized by law.

**§ 1-1.305-3 Deviations from Federal Specifications.**

When the essential needs of an agency are not adequately covered by an existing Federal Specification, and the proposed purchase does not come within the exceptions described in section 1-1.305-2, the agency may authorize deviations from the Federal Specification; provided, that:

(a) Requirements of existing Federal Specifications shall be used to the maximum extent practicable.

(b) Each agency taking such deviations shall establish procedures whereby a designated official having substantial procurement responsibility shall be responsible for assuring that:

(1) Federal Specifications are used, and provisions for exceptions and deviations are complied with;

(2) Justifications for exceptions and deviations are subject to competent review before authorization, and that such justifications can be fully substantiated if post audit is required;

(3) Major or repeated deviations are not taken except as prescribed in this section 1-1.305-3; and

(4) Notification or recommendation for change in the specification is sent

promptly to the General Services Administration by the designated official or subdivision at the agency level, through established agency channels, when—

(i) Deviations taken are of a major nature such as to result in the entrance of a new item into the supply system of the agency as evidenced by the development of a new item identification; or

(ii) A deviation is taken repeatedly.

(5) Notification or recommendation for change in the specification shall be submitted, in duplicate, to the General Services Administration, Federal Supply Service, Washington 25, D.C. It shall include a statement of the deviations authorized by the agency, with justification therefor, and, where applicable, recommendation for revision or amendment of the specification.

(c) Deviations taken and reported by the agency in accordance with section 1-1.305-3(b) may not be continued except under the following conditions:

(1) Upon notification by an agency that major or repeated deviations have been taken and where no recommendation for change in the specification is made by the agency, the General Services Administration will notify the agency as to whether such deviations may be continued in subsequent procurement. In cases where deviations are not approved and where procurement by the agency has progressed to a point where it would be impracticable to amend or cancel the action, such action may be completed, but the deviation shall not be authorized by the agency in subsequent procurement.

(2) Where an agency has recommended changing the specification consistent with the deviations it has taken and reported, those deviations may be continued until such time as the recommended change is coordinated and incorporated in the specification; provided, that where coordination with Federal agencies and industry, as applicable, does not result in acceptance of the change, such deviations shall not be authorized by the agency in subsequent procurement.

**§ 1-1.305-4 Optional use of Interim Federal Specifications.**

Interim Federal Specifications are for optional use. All agencies are urged to make maximum use of Interim Federal Specifications and to submit statements of suggested changes to the assigned agency for consideration in further development of the specifications for promulgation as Federal Specifications.

**§ 1-1.305-5 Use of Federal and Interim Federal Specifications in Federal construction contracts.**

When material, equipment, or services for which a Federal or Interim Federal Specification is available are specified in connection with Federal construction, the Federal or Interim Federal Specification shall be made a part of the specification for the construction contract, subject to the provisions in section 1-1.305.

**§ 1-1.305-6 Military and departmental specifications.**

If no Federal Specification is available, existing Interim Federal, military, and departmental specifications which are listed in the Index of Federal Specifications and Standards should be considered and, wherever practicable, used by any agency having need therefor, consistent with the agency's procedures establishing priority for use of such specifications.

**§ 1-1.306 Standards.<sup>1</sup>**

"Standards," as used in this section 1-1.306, are descriptions which establish engineering or technical limitations and applications for materials, processes, methods, designs, or drafting room and other engineering practices, or any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products; and which may be used in specifications, invitations for bids, proposals, and contracts. The identification of the categories and intended use of such standards are as follows:

(a) *Federal Standard.* A standard promulgated by the General Services Administration, mandatory for use by all executive agencies, including the Department of Defense.

(b) *Interim Federal Standard.* A standard intended for final processing as a new or revised Federal Standard, issued in interim form for optional use by executive agencies.

(c) *Military (MIL) Standard.* A standard issued by the Department of Defense used solely or predominantly by and mandatory on military activities. This definition includes both fully coordinated and limited coordination military standards.

(d) *Departmental Standards.* A standard developed and prepared by, and of interest primarily to, a particular executive civilian agency, but which may be used in procurement by other agencies.

**§ 1-1.306-1 Mandatory use and application of Federal Standards.**

Federal Standards shall be used by all executive agencies, including the Department of Defense. Exceptions to this mandatory use requirement are as follows:

(a) The exceptions in section 1-1.305 relating to the mandatory use of Federal Specifications, are for application to the use of Federal Standards.

(b) In a specific case or class of cases an executive agency may be granted an exception by the General Services Administration on submission of an adequate justification therefor.

**§ 1-1.307 Purchase descriptions.**

**§ 1-1.307-1 Applicability.**

(a) Purchase descriptions may be used in the procurement of supplies or services only when the use of formal (including interim and other temporary) Gov-

<sup>1</sup> Other instructions concerning the use of standards that are of interest and applicable to executive agencies, but which are of no interest to the public, are contained in General Services Administration Regulation I-VI, Part 2.

ernment specifications and standards to describe such supplies or services is not required under applicable regulations. (See sections 1-1.305 and 1-1.306.) However, where the use of a formal specification or standard is required, use of supplementary descriptive information which is consistent with the specification or standard is permissible.

(b) Purchase descriptions used in competitive procurements shall not specify a product having features which are peculiar to the product of one manufacturer, producer, or distributor, and thereby preclude consideration of a product of another company, unless it has been determined that those particular features are essential to the Government's requirements, and that similar products of other companies lacking those features would not meet the minimum requirements for the item.

(c) Purchase descriptions, as well as other forms of specifications, must accurately reflect the needs of the Government.

#### § 1-1.307-2 General requirements.

Except as otherwise provided in sections 1-1.307-3 and 1-1.307-4 purchase descriptions shall clearly and accurately describe the technical requirements or desired performance characteristics of the supplies or services to be procured; and, when appropriate, the testing procedures which will be used in determining whether such requirements or characteristics are met. When necessary, preservation, packaging, packing, and marking requirements shall be included. Purchase descriptions may contain references to formal Government specifications and standards which are to form a portion of the purchase description.

#### § 1-1.307-3 Commercial, and State and local government specifications and standards.

Purchase descriptions may include or consist of references to specifications and standards issued, promulgated, or adopted by technical societies or associations, or State and local governments, if such specifications and standards (a) are widely recognized and used in commercial practice, (b) conform to the requirements of section 1-1.307-2, and (c) are readily available to suppliers of the supplies or services to be procured.

#### § 1-1.307-4 Brand name products or equal.

Purchase descriptions may consist of references to one or (preferably) more commercial products described by brand name and make or model number or other appropriate nomenclature (by which such products are offered for sale to the public by particular manufacturers, producers, or distributors) followed by the words "or equal." Such purchase descriptions, known as "brand name or equal" purchase descriptions, shall be used in accordance with sections 1-1.307-5 through 1-1.307-9, and shall contain the following information, to the extent available, and such other information as is necessary to describe the item required:

(a) Complete common generic identification of the item required, together

with a description of the main and required characteristics.

(b) Complete name of manufacturer, producer, or distributor of each brand name product referenced. (Also, address if company is not well known.)

(c) Applicable model, make, or catalog number for each brand name product referenced, and the catalog in which it appears.

When necessary to describe adequately the item required, an applicable catalog description, or pertinent extracts therefrom, may be used, providing such description is identified in the invitation as being that of the particular named manufacturer, producer, or distributor.

#### § 1-1.307-5 Limitations on use of brand name or equal purchase descriptions.

Brand name or equal purchase descriptions may be used only under the circumstances in (a) or (b) below:

(a) When a suitable formal Government specification or standard is not available, and a purchase description of the type referred to in section 1-1.307-3 is inadequate or unavailable, and a purchase description meeting the general requirements of section 1-1.307-2 cannot be prepared because—

(1) Construction or composition of the product to be procured is too technically involved;

(2) Public exigency or military necessity precludes timely development; or

(3) It is impracticable or uneconomical to prepare a purchase description.

(b) When purchasing items for authorized resale, except military clothing.

(c) The product to be referenced must, in any event, be regularly offered for sale to the public.

(d) When a brand name or equal description is used, a notation shall be made in the case file as to the reasons therefor.

#### § 1-1.307-6 Invitation for bids, brand name or equal descriptions.

When a brand name or equal purchase description is included in an invitation for bids:

(a) The following shall be inserted after each item so described in the invitation, for completion by the bidder—

Bidding on:  
Manufacturer's Name ---- Brand ---- No. --

(b) In addition, the following clause shall be included in the invitation:

#### BRAND NAMES

(For the purpose of this clause references to "brand name" shall mean brand name and/or make or model number.)

(a) If articles have been identified in this invitation by a "brand name or equal" description, such reference is intended to be descriptive, but not restrictive, and is for the sole purpose of indicating to prospective bidders a description of articles that will be satisfactory. Bidders are not expected to furnish exact duplicates but only articles which are equal, insofar as the Government's needs are concerned, to the referenced brand name articles. Bids offering articles other than brand name articles referenced in this invitation will be considered only if such offered articles are clearly identified in the bids and bidders furnish with their bids (1)

descriptive material, including cuts, illustrations, drawings, or other graphic material, which will clearly show the characteristics of the articles offered, and (2) a statement showing in detail the differences between the articles offered and those referenced in the invitation. Failure to furnish the information required by (1) and (2) above will require rejection of the bids.

(b) Unless the bidder clearly indicates in his bid that he is offering a different article, his bid shall be considered as offering a brand name article referenced in the invitation.

(c) Bidders are cautioned that in evaluating bids offering articles other than the brand names referenced in the invitation, the Government will consider that the bidder intends to bind himself to furnish only the articles described in his bid and any attached descriptive material.

If a bidder offering brand name articles which differ from those articles referenced in the invitation proposes to modify the brand name articles he has identified in his bid so as to make the offered articles equal those referenced insofar as the needs of the Government are concerned, he shall (1) include in his bid a clear description of such proposed modifications, or (2) clearly mark any descriptive material to show the proposed modifications. Modifications proposed after bid opening will not be considered.

#### § 1-1.307-7 Bid evaluation and award, brand name or equal descriptions.

(a) Bids offering articles which differ from brand name articles referenced in the invitation for bids shall be considered for award when the contracting officer determines, in accordance with the terms of the clause in section 1-1.307-6(b), that such articles are equal, insofar as the needs of the Government are concerned, to the articles referenced. Rejection of bids shall not be based on minor differences in design, construction, or features which do not affect the suitability of an article for its intended use.

(b) Notices of award shall identify the specific articles (including any brand name and/or make or model number and any modifications of such brand name article specified in the bid) which the contractor has offered to furnish regardless of whether such articles are or are not of the brand name referenced in the invitation for bids.

#### § 1-1.307-8 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed in sections 1-1.307-6 and 1-1.307-7 for formally advertised procurements shall be generally applicable to negotiated procurements.

(b) The clause in section 1-1.307-6(b) may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering articles different from the articles referenced by brand name will be considered if the contracting officer determines that such offered articles are equal in all significant and material respects to the articles referenced.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

**§ 1-1.307-9 Inspection and acceptance.**

Inspection and acceptance of deliveries shall be made on the basis of the item described in the notice of award and/or contract.

§ 1-1.308 [Reserved.]

§ 1-1.309 [Reserved.]

**§ 1-1.310 Responsible prospective contractor.****§ 1-1.310-1 Scope.**

Section 1-1.310 prescribes policy and procedures governing executive agencies in determining, before award, whether prospective contractors for furnishing the Government supplies or nonpersonal services (including construction) qualify as responsible.

**§ 1-1.310-2 General.**

The award of contracts to bidders who are not responsible is a disservice to the Government, which may, by such awards, be denied acceptable supplies or services within the time required. It frequently is inequitable to the contractors themselves, who may suffer hardship, sometimes even business failure, as a result of defaults, deductions, and rejections because of inability to meet contract requirements. Moreover, such awards are unfair to other competing bidders, capable of performance, and discourage them from bidding on future procurements. It is essential, therefore, that precautions be taken to award contracts only to reliable and capable bidders who can reasonably be expected to comply with contract requirements.

**§ 1-1.310-3 Applicability.**

This section 1-1.310 is applicable to all procurements made by executive agencies in the United States, its possessions, Hawaii, and Puerto Rico and, to the extent practicable, in other places. It is not applicable to orders placed under existing Government contracts, or to procurements from: (a) other governments (foreign, State, or local) or their instrumentalities; (b) other United States Government departments and agencies or their instrumentalities (such as, Federal Prison Industries, Inc.); and (c) National Industries for the Blind.

**§ 1-1.310-4 General policy.**

It is the policy that contracts shall be awarded only to responsible prospective contractors. A "responsible prospective contractor" is one which is found by the contracting officer to meet the minimum standards set forth in section 1-1.310-5 and such additional standards as may be prescribed for specific procurements by the agency concerned.

**§ 1-1.310-5 Standards.**

(a) In order to qualify as responsible, a prospective contractor must, in the opinion of the contracting officer, meet the following standards as they relate to the particular procurement under consideration:

(1) Is a manufacturer, regular dealer, service contractor, or construction contractor (as defined in Subpart 1-1.2), or such other person or firm as may be found by the agency concerned

to be qualified and responsible as a source of supply;

(2) Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;

(3) Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

(4) Is able to comply with the proposed or required time of delivery or performance schedule;

(5) Has a satisfactory record of integrity, judgment, and performance (contractors which are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement);

(6) Has not indicated an unwillingness or inability to conform to the requirements of the standard nondiscrimination clause; and

(7) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(b) Acceptable evidence of "ability to obtain" financial resources, experience, organization, technical qualifications, skills, and facilities (see (a) (2) and (3), above), generally shall be a firm commitment or arrangement for the rental, purchase, or other acquisition thereof.

**§ 1-1.310-6 Determination of responsibility.**

(a) No contract shall be awarded to any person or firm unless the contracting officer has first determined that such person or firm is responsible within the meaning of sections 1-1.310-4 and 1-1.310-5. The signing of a contract shall be deemed to be a certification by the contracting officer that he has determined that the prospective contractor is responsible with respect to that contract.

(b) In any case where the procurement exceeds \$10,000, and the contracting officer (or contracting agency) considers such a statement advisable for justification or other reasons, the contracting officer shall prepare, sign, and place in the contract file a statement of the facts on which the determination of responsibility was based. Relevant factors for consideration in determining whether such a statement is advisable would include the value, importance, or technical aspects of the procurement, or the fact that a pre-award on-site evaluation was considered necessary and that it was made. Any supporting documents or reports, including reports of pre-award on-site evaluation and any information to support determinations of responsibility of subcontractors, should be filed with the statement.

**§ 1-1.310-7 Information regarding responsibility.**

Before making a determination of responsibility, the contracting officer shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in section 1-1.310-5. Information from the follow-

ing sources should be utilized before considering making a pre-award on-site evaluation:

(a) Information from the prospective contractor, including representations and other data contained in bids and proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements.

(b) Other existing information within the agency, including financial data, the list of debarred and ineligible bidders (see Subpart 1-1.6), and records concerning contractor performance.

(c) Publications, including credit ratings, and trade and financial journals.

(d) Other sources, including banks, other financial companies, and Government departments and agencies.

**§ 1-1.310-8 Capacity and credit of small business concerns.**

In the case of a prospective contractor which is a small business concern, if the contracting officer is not satisfied that the prospective contractor meets the standards in section 1-1.310-5 only because of the lack of adequate capacity or credit, he shall, before making a responsibility determination, comply with the requirements concerning Certificates of Competency issued by the Small Business Administration (see Subpart 1-1.7).

**§ 1-1.310-9 Pre-award on-site evaluation.**

(a) A pre-award on-site evaluation is an inspection of facilities and equipment with which a prospective contractor proposes to perform a contract, including interviews with contractor personnel. It is made at the direction of the contracting officer, generally by Government specialists, to provide needed responsibility information.

(b) Pre-award on-site evaluations need normally not be performed when the information sources stated in section 1-1.310-7 yield sufficient data to enable a contracting officer to make a determination regarding the responsibility of a prospective contractor. Generally, pre-award on-site evaluations are not necessary in connection with contracts of less than \$10,000.

(c) Pre-award on-site evaluations shall cover only those standards or portions thereof concerning which information available (from the sources listed in section 1-1.310-7) appears to be not current, sufficient, or reliable.

**§ 1-1.310-10 Performance records.**

Such records of contractor past performance shall be maintained as are considered necessary for the use of contracting officers in placing new procurements. Records in more complete detail should be maintained on contractors which have indicated by past actions that the character of their performance on contracts is questionable, and on new contractors whose reliability has not been established.

**§ 1-1.310-11 Subcontractor responsibility.**

Generally, the evaluation of the qualifications of subcontractors is a function of the prime contractor. However, to the extent that a prospective contractor

cannot meet the standard in section 1-1.310-5(a) (3) except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable purchasing and subcontracting system or prospective major subcontractors are determined by the contracting officer to satisfy that standard.

**§ 1-1.311 Priorities, allocations, and allotments.**

In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, agencies shall require contractors to use ratings and allotment authority to support defense needs to the extent required by regulations of the Business and Defense Services Administration, Department of Commerce.

**§ 1-1.312 [Reserved.]**

**§ 1-1.313 Records of contract actions.**

Each contract file should contain documentation of actions taken with respect to each contract, including final disposition. To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or a summary statement of such undocumented actions should be prepared promptly and be retained in the contract file.

**§ 1-1.314 Solicitations for informational or planning purposes.**

It is the general policy of the Government to solicit bids, proposals, or quotations only where there is a definite intention to award a contract. However, in some cases requests for informational or planning purposes may be justified. In such cases the request shall clearly state its purpose, explaining that the Government does not intend to award a contract on the basis of the request, or otherwise pay for the information solicited.

**§ 1-1.315 Use of liquidated damages provisions in procurement contracts.**

**§ 1-1.315-1 General.**

This section 1-1.315 prescribes (a) policy which shall govern executive agencies in the use of liquidated damages provisions in contracts for supplies and services, including construction, entered into by formal advertising or by negotiation, and (b) a provision which shall be inserted in contracts for supplies and services, other than construction, when liquidated damages are stipulated.

**§ 1-1.315-2 Policy.**

(a) Liquidated damages provisions may be used only where both: (1) the time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damage if the delivery or performance is delayed, and (2) the extent or amount of such damage would be difficult or impossible of ascertainment or proof.

(b) In making decisions as to whether liquidated damages provisions are to be

used, consideration should be given to their probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration, as well as the availability of provision elsewhere in the contract for recovery of excess costs in termination cases.

(c) The rate of liquidated damages stipulated must be reasonable in relation to anticipated damages, considered on a case-by-case basis, since liquidated damages fixed without any reasonable reference to probable damages may be held to be not compensation for anticipated damages caused by delay, but a penalty, and therefore unenforceable.

(d) Where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to exercise its right to terminate as provided in the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. Efficient administration of contracts containing liquidated damages provisions is imperative to prevent undue loss to defaulting contractors and to protect the interests of the Government.

(e) Whenever any contract includes a provision for liquidated damages for delay, the Comptroller General, on the recommendation of the head of the agency concerned, is authorized and empowered, by law, to remit the whole or any part of such damages as in his discretion may be just and equitable.

**§ 1-1.315-3 Contract provisions.**

(a) *Supply or service contracts.* When a liquidated damages provision is to be used in a supply or service contract which includes Standard Form 32, General Provisions (Supply Contract), the following provision shall be inserted in the invitation for bids and an appropriate rate(s) of liquidated damages (determined pursuant to section 1-1.315-2) shall be stipulated:

**LIQUIDATED DAMAGES**

Article 11(f) of Standard Form 32, General Provisions (Supply Contract), is redesignated as Article 11(g) and the following is inserted as Article 11(f):

(f) (i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonably obtain delivery or performance of similar supplies or services.

(ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause.

(b) *Construction contracts.* Liquidated damages provisions for construction contracts are contained in the Termination for Default-Damages for Delay-Time Extensions clauses of both Standard Form 19, Invitation, Bid and Award (Construction, Alteration or Repair), and Standard Form 23A, General Provisions (Construction Contracts).

**Subpart 1-1.4—[Reserved]**

**Subpart 1-1.5—Contingent Fees**

**§ 1-1.500 Scope of subpart.**

This subpart prescribes the use by executive agencies of the "covenant against contingent fees" and sets forth the policies, forms, methods, procedure, principles, and standards related thereto. The requirements of this subpart have as their objective the prevention of improper influence in connection with the obtaining of Government contracts, the elimination of arrangements which encourage the payment of inequitable and exorbitant fees bearing no reasonable relationship to the services actually performed, and the prevention of unwarranted expenditure of public funds which inevitably results therefrom. The methods used to achieve these objectives are the requirement for disclosure of the details of arrangements under which agents represent concerns in obtaining Government contracts, and the prohibiting, by use of the covenant against contingent fees, of certain types of contractor-agent arrangements.

**§ 1-1.501 Applicability.**

The provisions of this subpart apply to all contracts for the procurement of personal property and nonpersonal services, including the procurement of construction. The Criminal Code will apply in any case involving actual criminal conduct.

**§ 1-1.502 Improper influence.**

The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

**§ 1-1.503 Covenant.**

Executive agencies shall include in every negotiated or advertised contract a "covenant against contingent fees" substantially as follows (set forth as article 20 of Standard Form 32, General Provisions (Supply Contract), and article 15 of Standard Form 23A, General Provisions (Construction Contract)):

**COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

**§ 1-1.504 General principles and standards applicable to the covenant.**

**§ 1-1.504-1 Use of principles and standards.**

The principles and standards set forth in this subpart are intended to be used as a guide in the negotiation, awarding, administration, and enforcement of Government contracts.

**§ 1-1.504-2 Contingent character of the fee.**

Any fee whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

**§ 1-1.504-3 Exceptions to the prohibition.**

There are excepted from the prohibition of the covenant "bona fide employees" and "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

**§ 1-1.504-4 Bona fide employee.**

(a) The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in section 1-1.504-5(b) except subparagraph (4) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

(d) A person may be a bona fide employee whether his compensation is on a fixed salary basis or, when customary in the trade, on a percentage, commission or other contingent basis, or a combination of the foregoing.

**§ 1-1.504-5 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.**

(a) An agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being

able to obtain any Government contract or contracts through improper influence.

(b) In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(1) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(2) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(3) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.

(4) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(5) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly

those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

**§ 1-1.504-6 Fees for "information."**

Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

**§ 1-1.505 Representation and agreement required from prospective contractors.**

Except as provided in section 1-1.507-3, each executive agency shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. Where an invitation for bids is issued, this inquiry shall be made (and written representation and agreement secured) by requiring the bidder (or contractor) to check the appropriate box in the following statement (which appears on Standard Form 21, Bid Form (Construction Contract), Standard Form 30, Invitation and Bid (Supply Contract), and Standard Form 33, Invitation, Bid and Award (Supply Contract)) to be included in the invitation or bid form:

The bidder represents: (a) that he  has,  has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder to solicit or secure this contract, and (b) that he  has,  has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (Note: For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter I, Subpart 1-1.5.)

**§ 1-1.506 Interpretation of the representation.**

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in section 1-1.505, the definition of "bona fide employee" is as specified in section 1-1.504-4.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative

and, as required, furnish information with respect to such employment or retention.

(c) If the representation would otherwise be answered in the affirmative the fact that the person employed or retained by the bidder or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answer in the negative.

#### § 1-1.507 Use of Standard Form 119.

##### § 1-1.507-1 Form prescribed.

Pursuant to the Act and in furtherance of the objectives stated in section 1-1.500, Standard Form 119 (December 1952), Contractor's Statement of Contingent or Other Fees for Soliciting or Securing or Resulting from Award of Contract, is hereby prescribed and shall be used in accordance with the provisions of this subpart. Except as provided in section 1-1.507-3, this form shall be used without deviation by executive agencies whenever either part of the inquiry provided for in section 1-1.505 is answered in the affirmative. The form shall be used also without deviation in any other case where an executive agency desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors.

##### § 1-1.507-2 Statement in lieu of form.

Any bidder or proposed contractor who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation or contract in connection with which such form was submitted, and (c) representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

##### § 1-1.507-3 Exceptions.

The inquiry and agreement specified in section 1-1.505 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed \$25,000.

(b) Any negotiated contract in which the aggregate amount involved does not exceed, in the case of the Department of Defense, \$5,000; in all other cases, \$2,500.

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000.

(d) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis.

(e) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply.

(f) Contracts to be made in foreign countries.

(g) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary, Under Secretary, or Assistant Secretary of a military department. Reports of any such exceptions shall be filed promptly with the Administrator of General Services.

#### § 1-1.508 Enforcement.

##### § 1-1.508-1 Failure or refusal to furnish representation and agreement.

Each executive agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as described in section 1-1.505.

(a) If the indicated successful bidder or proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with established procedure.

(b) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119, prior to acceptance of the offer or execution of the contract unless the head of the executive agency (including, for this purpose, any military department) concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement as described in section 1-1.505, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement, after such opportunity has been afforded, shall require rejection of the bid or offer.

##### § 1-1.508-2 Failure or refusal to furnish Standard Form 119.

If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in section 1-1.507-2, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(b) If the contract has been awarded or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.

#### § 1-1.508-3 Misrepresentations or violations of the covenant against contingent fees.

In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(b) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms; that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(c) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.

(d) Determine whether the case should be referred to the Department of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.

#### § 1-1.509 Preservation of records.

Executive agencies shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119 (or statement in lieu of form), together with a record of any other pertinent data, including data as to action taken.

### Subpart 1-1.6—Debarred and Ineligible Bidders

#### § 1-1.601 Purpose.

This subpart prescribes policies and procedures relating to the debarment of bidders for any cause and ineligibility of bidders under section 1a of the Walsh-Healey Public Contracts Act (41 U.S.C. 35a). It is directly applicable to executive agencies in negotiated or advertised purchasing and in contracting for the construction, repair, alteration, destruction, or dismantlement of public works or buildings. Other Federal agencies are requested to comply therewith in conducting their purchasing and contracting operations.

#### § 1-1.602 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

(a) Each executive agency shall establish and maintain, on the bases contained in section 1-1.603, a consolidated list of firms and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited as provided in section 1-1.604.

(b) The list shall show as a minimum the following information:

(1) The names of those firms or individuals debarred or ineligible (in alphabetical order) with appropriate cross reference where more than one name is involved in a single action;

(2) The basis of authority for each action;

(3) The extent of restrictions imposed; and

(4) The termination date for each debarred listing.

(c) Each executive agency shall determine, in its discretion, as the interests of the national security may require, the necessity for and degree of classification of its list and correspondence relating thereto. If the agency determines that its list shall not be classified, the list should be marked "For Official Use Only" or with a word or phrase of equivalent meaning.

(d) The list shall be kept current by issuance of notices of additions and deletions.

**§ 1-1.603 Bases for debarment and ineligible list entry.**

Entry shall be made on the debarment and ineligible list of firms or individuals on the following bases:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that Act.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)), as found by the Comptroller General to have violated said Act.

(c) Those listed by the Comptroller General in accordance with the provisions of Part 5, section 5.6(b) of the Regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provisions of any of the following statutes—

(1) Davis-Bacon Act (40 U.S.C. 276a).

(2) Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c).

(3) Eight-Hour Law (40 U.S.C. 321).

(4) National Housing Act (12 U.S.C. 1703).

(5) Hospital Survey and Construction Act (42 U.S.C. 291).

(6) Federal Airport Act (49 U.S.C. 1101).

(7) Housing Act of 1949 (42 U.S.C. 1401).

(8) School Survey and Construction Act of 1950 (20 U.S.C. 251).

(9) Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1591).

(d) Those the executive agency determines to debar administratively for any of the causes and under all of the appropriate conditions listed in section 1-1.605.

(e) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C.

10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provision required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

(f) Those found by the Secretary of Labor ineligible to be awarded contracts for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

**§ 1-1.604 Treatment to be accorded firms or individuals in debarred or ineligible status.**

Firms or individuals listed by the agency as debarred or ineligible shall be treated as follows:

(a) *Total restrictions.* Contracts shall not be awarded to firms or individuals that are listed on the basis of section 1-1.603 (a), (b), or (d), or to any firm, corporation, partnership, or association in which such firm or individual has a controlling interest, nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the head of an agency or his designee, an exception may be made with respect to a particular procurement action even when a firm or individual is listed as debarred on the basis of section 1-1.603(d).

(b) *Restrictions under statutes designated in the regulations of the Secretary of Labor.* A contractor listed on the basis of section 1-1.603(c), or any firm, corporation, partnership, or association in which such contractor has a controlling interest, shall be ineligible for a period of three years (from the date of publication by the Comptroller General) to receive any contracts subject to any of the statutes listed in section 1-1.603(c).

(c) *Buy American Act restrictions.* As specified in the Buy American Act (41 U.S.C. 10b(b)), contracts shall not be awarded for construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere to firms or individuals listed on the basis of section 1-1.603, nor shall bids or proposals therefor be solicited therefrom. However, firms or individuals listed on this basis may be awarded contracts and may be solicited for bids or proposals for other than construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere.

(d) *Ineligibility restrictions of the Walsh-Healey Act.* Contracts shall not be awarded to firms or individuals in any amount exceeding \$10,000 for those materials, supplies, articles, or equipment with respect to which the firm or individual has been found to be ineligible to be awarded a contract by the Secretary of Labor, as provided in section 1-1.603(f). However, firms or individuals listed on this basis may, in the discretion of each executive agency, be awarded contracts and may be solicited by bids or proposals, for (1) such materials, supplies, articles, or equipment when the amount does not exceed \$10,000; (2) services regardless of amount; and (3) commodities in which

not declared ineligible regardless of amount.

**§ 1-1.605 Causes and conditions applicable to determination of debarment by an executive agency.**

Each executive agency is authorized to debar in the public interest a firm or individual for any of the causes and under all appropriate conditions listed:

(a) *Causes.*

(1) Conviction for commission of a criminal offense as an incident to obtaining a contract or in an attempt to obtain a contract or in the performance thereof.

(2) Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the agency involved to be so serious as to justify debarment action—

(i) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract.

(ii) A history of unsatisfactory performance of one or more Government contracts.

(iii) Violation of the contractual provision against contingent fees.

(iv) Acceptance of a contingent fee, which is paid in violation of contractual provision against contingent fees.

(4) Debarment by some other executive agency.

(b) *Conditions.*

(1) Debarment for any of the causes of (a) shall be made only upon approval of the head of the executive agency or his duly authorized representative.

(2) Causes (a) (1) and (2) shall have been established by criminal conviction by a court of competent jurisdiction. In the event appeal taken from such conviction results in reversal of conviction, the debarment shall be removed if the bidder so requests. Criminal conviction for the above mentioned offenses does not necessarily require that the firm or individual be debarred, since the decision to debar is still within the discretion of the executive agency concerned. The seriousness of the offense, the civil satisfaction received by the Government or available to the Government, and all mitigating factors should be considered in making the determination to debar.

(3) Cause (a) (3) shall be established by evidence which the executive agency determines to be clear and convincing.

(4) Debarment for cause (a) (4) shall be made on the same bases as provided for whichever of causes (a) (1) to (3) is appropriate, and may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency.

(5) The debarment shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense.

(6) The firm or individual shall be given written notice of the debarment or of the intent to debar, except in the case

of cause (a) (4) The notice shall state, as a minimum, the period of the proposed debarment, including effective dates; the reasons for debarment, including a statement of the specific instances of dereliction, and shall provide reasonable opportunity for the contractor to present information for consideration upon his behalf. When the contractor does present such information he shall be given written notice of the final decision, and, if the decision provides for debarment, the period and effective dates thereof.

#### § 1-1.606 Agency procedure.

Each executive agency shall:

(a) Establish internal procedures and methods for giving effect to this section.

(b) Notify the General Services Administration (GSA) of the name and address of its central office where debarment information should be sent.

(c) Furnish to GSA at time of issuance a copy of the notice of debarment on those debarments made under provisions of section 1-1.605(a), or the Buy American Act, and of any removals from such debarments.

(d) Check the list of debarred bidders furnished by GSA, and consider firms or individuals listed thereon for inclusion upon its own list, in accordance with the provisions of this Subpart 1-1.6.

(e) As needed, request from GSA a copy of the notice on any debarment case appearing on the list herein provided to be compiled and distributed by GSA. If desired, direct inquiry concerning any debarment case may be made of the agency which originated the action.

(f) Make its list available to all contracting officers within the agency

#### § 1-1.607 General Services Administration responsibility.

In addition to the agency procedure provided in section 1-1.606, GSA will:

(a) Compile and distribute to the designated central office address of each agency a listing of the administrative debarments and debarments under the Buy American Act taken by the agencies, including the basis of action, in order that each executive agency may be informed of actions taken by each other agency. In general application, this listing will be for information purposes only and it is not intended to take the place of, or be an addition to, the lists maintained by the various agencies.

(b) Furnish to any agency on specific request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in section 1-1.605(a) or under the Buy American Act.

#### § 1-1.608 Supplemental names included for other causes.

Nothing in this Subpart 1-1.6 shall prevent any agency from supplementing the consolidated list with names of firms or individuals administratively determined to be included, in accordance with procedures established by such agency, for causes other than those specifically set forth herein, or from establishing such other lists as any agency in its discretion, may elect to use.

### Subpart 1-1.7—Small Business Concerns

#### § 1-1.701 General.

This subpart developed cooperatively with the Small Business Administration and the Government agencies having procurement authority, prescribes uniform policies and procedures for the making of set-asides to small business concerns through joint cooperative actions of the Small Business Administration (SBA) and the contracting procurement agency involved. It also describes the procedure for the issuance by SBA of Certificates of Competency. The purpose of small business procurement set-asides is to increase small business participation in Government procurement to the maximum extent consistent with the primary responsibility of each contracting procurement agency concerned.

#### § 1-1.702 Policy.

(a) It is the policy of the Government that a fair proportion of its total purchases and contracts for supplies, property maintenance, repair and construction, services, and research and development, shall be placed with small business concerns.

(b) The Small Business Act, as amended by Public Law 85-536, provides that the Government should aid, counsel, assist, and protect, insofar as is possible, the interest of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services, including, but not limited to, contracts for maintenance, repair, and construction, be placed with small business enterprises, and to maintain and strengthen the overall economy of the Nation. Section 15 of the Small Business Act provides that small business concerns shall receive any award or contract, or any part thereof, as to which it is determined by SBA and the contracting procurement agency concerned to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity (2) war or national defense programs, or (3) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns.

(c) In order to conduct a uniform cooperative program of action for carrying out this Government policy, contracting procurement agencies and SBA shall:

(1) Freely interchange ideas and information, including statistical data, at all levels, relating to programs for limiting suitable procurements to small business concerns; and make maximum use of the capacity of small firms in such programs in order to accomplish the purpose of this policy.

(2) Adopt and utilize procedures prescribed in this subpart for implementing this policy.

#### § 1-1.703 Applicability.

This subpart is applicable to all small business set-aside programs of executive agencies in connection with the procure-

ment of supplies, property, maintenance, repair, construction, services, or research and development.

#### § 1-1.704 Definitions.

The following terms shall have the meanings set forth:

(a) *Small business concern.* Any firm which meets the criteria established by Title 13, Chapter I, Part 121, of the Code of Federal Regulations.

(b) *Set-aside for small business.* The act of reserving the entire amount (total set-aside) or a portion (partial set-aside) of a procurement for the exclusive participation of small business concerns pursuant to section 15 of the Small Business Act. Set-asides may be made for individual items or for classes of items.

(c) *Small business restricted advertising.* A method of negotiated procurement conducted in the same manner as under formal advertising, except that bids and awards are restricted to small business concerns pursuant to section 15 of the Small Business Act.

(d) *Certificates of competency.* The certification by SBA, under the authority of the Small Business Act, that any small business concern, or group of such concerns, is competent with respect to capacity and credit to perform a given contract.

#### § 1-1.705 SBA representatives.

SBA may assign one or more representatives on a full- or part-time basis to any procurement agency having a small business set-aside program for the purpose of carrying out SBA responsibilities under the Small Business Act. SBA representatives will comply with agency directives concerning the conduct of procurement personnel and instructions concerning release of procurement information. Appropriate desk space and telephone facilities will be provided by procurement agencies for SBA representatives assigned.

#### § 1-1.706 Screening of procurements.

(a) SBA representatives when properly authorized (and cleared for security where classified procurements are to be screened) shall be afforded an opportunity to review all proposed procurements and requirements, and make recommendations concerning them, including proposals that they be totally or partially set aside for small business concerns.

(b) SBA representatives shall be afforded an opportunity to examine existing bidders' mailing lists and to secure the inclusion of additional small business concerns on such lists. To facilitate the participation of additional small business sources, pertinent procurement information, such as drawings and specifications, shall be furnished SBA by the contracting procurement agency upon request, and SBA will be afforded an opportunity to recommend, within a reasonable period of time, consistent with urgency of the requirement, names of small business concerns to be afforded an opportunity to participate in current procurements.

§ 1-1.707 Procurement set-asides for small business.

(a) *General.* Any procurement, or an appropriate part thereof, whether classified or unclassified, shall be set aside for the exclusive participation of small business concerns when such action is jointly determined by SBA and the contracting procurement agency to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity or (2) war or national defense programs, or (3) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns. These determinations may be made for individual items or for classes of items.

(b) *Initiation of set-asides.* Generally SBA representatives will initiate recommended small business set-aside actions.

(c) *Review of SBA set-aside proposals.*

(1) When a SBA representative has recommended in writing that a procurement, or a portion thereof, be set aside for small business, the contracting officer (or other designated representative) of the contracting procurement agency shall.

(i) Concur in the recommendation, or

(ii) Disapprove the recommendation, stating in writing his reasons for disapproval. (The SBA representative shall be allowed two working days to appeal any such disapproval to the head of the purchasing activity or his designee. Whenever SBA and the contracting procurement agency fail to agree, the matter will be submitted by the Administrator of SBA to the head of the agency for final determination.)

(2) Contracting officers shall not consider any one of the following factors as constituting a valid reason for disapproving a set-aside recommended by a SBA representative:

(i) A large percentage of previous procurements of the item in question has been placed with small business concerns.

(ii) The item to be purchased is on a planned procurement list or under a production allocation program.

(iii) The item to be purchased is on a qualified products list, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the qualified products list unless it has been confirmed that none of such large businesses desires to participate in the procurement.

(iv) A period of less than thirty days from date of issuance of invitations for bids or requests for proposals is prescribed for the submission of proposals, except in cases of true public exigency

(d) *Total set-asides.*

(1) The entire procurement shall be set aside for exclusive small business participation where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. (However as to partial set-asides, see section 1-1.707(e))

(2) Contracts for total small business set-asides shall be entered into by

negotiation. Wherever possible, the small business restricted advertising method, as defined in section 1-1.704, shall be used. Distribution of invitations for bids and requests for proposals shall be limited to the extent practicable to small business concerns.

(3) In procurements involving total set-asides for small business, each invitation for bids or request for proposals shall contain substantially the following notice:

**NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE**

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer and the Small Business Administration under the authority of section 15 of the Small Business Act. A small business concern is any firm which meets the criteria established by Title 13, Chapter I, Part 121, of the Code of Federal Regulations. Bids or proposals received from firms which are not small business concerns will be considered nonresponsive.

(e) *Partial set-asides.*

(1) A portion of a procurement shall be set aside for exclusive small business participation when the following factors are present:

(i) The procurement is not totally set aside pursuant to section 1-1.707(d)

(ii) The procurement is severable into two or more reasonable lots; and

(iii) Each of two or more small business concerns is expected to have the technical competence and productive capacity to furnish one or more of the reasonable lots.

(2) Where a portion of a procurement is to be set aside for small business the procurement shall be divided into a set-aside portion and a non-set-aside portion. Insofar as practicable, the set-aside portion shall be such as to make maximum use of small business capacity.

(3) In procurements involving partial set asides for small business, each invitation for bids or request for proposals shall contain the following Notice of Partial Small Business Set-Aside, in connection with contracts for supplies. The notice should be appropriately modified in connection with contracts for construction and services.

**NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE**

(a) *General.* This procurement has been divided into two parts. All concerns, whether small business or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation exclusively by small business concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. This action is based on a determination by the contracting officer and the Small Business Administration under the authority of section 15 of the Small Business Act. A small business concern is any firm which meets the criteria established by Title 13, Chapter I, Part 121, of the Code of Federal Regulations.

(b) *Non-set-aside portion and award procedure.*

(1) A bidder which is not a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a small business concern and is interested in receiving an award for a quantity of an item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an item in addition to the quantity set forth in the non-set-aside portion, it must bid the entire quantity of the non-set-aside portion of the item, and indicate such additional quantity of the item as it desires by so specifying on the Bidder's Statement of Set-Aside Portion Desired. Thus, the Bidder's Statement of Set-Aside Portion Desired is not to be used unless the bidder has bid the entire quantity of an item under the non-set-aside portion. However, a small business concern which receives no award, or receives an award for less than the total quantity of an item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an item, the small business concern must have submitted a responsive bid on such item in accordance with the requirements of (b) (2) above, at a unit price no greater than 120 percent of the highest unit price for such item awarded under the non-set-aside portion. (However, see (5) below when different quantities are offered at different prices)

(2) *Priorities.* Awards of the set-aside portion will be offered to eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. (However, see (5) below for the method of determining the bid when different quantities are offered at different prices)

(3) *Quantity.* The quantity of the set-aside portion of an item which may be offered to an eligible concern shall be as follows:

(i) As to an eligible concern which has not specified on the Bidder's Statement of Set-Aside Portion Desired a quantity of the set-aside portion of the item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that item, less the quantity, if any, of that item awarded to that concern under the non-set-aside portion.

(ii) As to an eligible concern which has submitted a bid for the entire non-set-aside portion of the item and has specified on the Bidder's Statement of Set-Aside Portion Desired a quantity of the set-aside portion of that item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the total of the entire non-set-aside portion of the item and the quantity thereof specified on the Bidder's Statement of Set-Aside Portion Desired, less the quantity, if any, of that item awarded to that concern under the non-set-aside portion.

(4) *Price.* Award for the set-aside portion of an item shall be made at a unit price equal to the highest unit price awarded on the non-set-aside portion.

(5) *Different quantities at different prices.* Where a concern has submitted a bid for different quantities of the non-set-aside portion of an item at different prices, without limiting the Government's right to accept one or more such quantities without acceptance of another quantity of the item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c) (1), above, and for the purpose of determining under (c) (2), above, the standing of that bid in the order of offering the set-aside portion of that item.

(d) *Special circumstances.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(e) *Instruction for indicating portion of set-aside quantity desired.* The quantity of each item which has been set aside is set forth in this invitation. As provided in (b) (2), above, the Bidder's Statement of Set-Aside Portion Desired is to be filled in only by small business concerns. Furthermore, it is to be used by such a concern only when (1) it has submitted a bid for the entire non-set-aside quantity of an item, and (2) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) (1), above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Bidder's Statement of Set-Aside Portion Desired unless the concern desires a quantity in excess of the non-set-aside quantity set forth in the Schedule.

**BIDDER'S STATEMENT OF SET-ASIDE PORTION DESIRED**

The quantity of each item which has been set aside is as follows:

1	2	3
Item No.	Quantity set-aside	Portion of set-aside quantity desired

[The issuing office shall identify by line item number the supplies being procured as to which a portion is set aside and shall designate the quantity set aside for each such item. The Portion of Set-Aside Quantity Desired column will be left blank for the bidder or offeror to fill in.]

(End of Notice)

(4) After the entire non-set-aside portion of an item has been awarded, awards of the set-aside portion of that item shall be made in accordance with the provisions of the Notice of Partial Small Business Set-Aside, as set forth in paragraph (c) thereof.

(f) *Automatic dissolution of set-asides.* If the entire set-aside portion is not procured by the method set forth in the contract clause, the set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with applicable regulations.

**§ 1-1.708 Withdrawal of set-asides.**

If, prior to award of a contract involving a set-aside for small business, the

contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may initiate withdrawal of the set-aside determination. If the SBA representative does not agree to the withdrawal, the matter will be referred by the Administrator of SBA to the agency head for final resolution. A signed memorandum of any withdrawal of a set-aside shall be retained in the contract file.

**§ 1-1.709 SBA Certificates of Competency.**

(a) SBA has statutory authority to certify the competence of any small business concern as to capacity and credit. Contracting procurement agencies shall accept SBA Certificates of Competency as conclusive as to capacity and credit.

(b) If a small business concern has submitted an otherwise acceptable bid or proposal but has been determined by the contracting officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected solely for this reason, (1) SBA shall be notified of the circumstances so as to permit it, if warranted, to process a Certificate of Competency, and (2) award shall be withheld, pending SBA action, up to ten working days after SBA is so notified.

(c) The procedure in this section 1-1.709 (a) and (b) is mandatory for all awards over \$5,000, except where the contracting officer certifies in writing that award must be made without delay and a statement justifying the action is signed by the contracting officer and placed in the contract file.

(d) To assist SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the procurement agency shall make available to SBA, at the time of notification, all available pertinent data, including technical and financial information, with respect to the small business concern involved.

**Subpart 1-1.8—[Reserved]**

**Subpart 1-1.9—Reporting Possible Antitrust Violations**

**§ 1-1.901 General.**

Section 302(d) of the Act requires, with respect to advertised procurement, that all violations of the antitrust laws be referred to the Attorney General when in the opinion of the agency head they evidence any violations of the antitrust laws. The procedures prescribed in this Subpart 1-1.9 shall be followed by all agencies in cases involving advertised procurement. They may also be used, where deemed appropriate, by such agencies where solicitation involving negotiation on a competitive basis is used.

**§ 1-1.902 Documents to be transmitted.**

In reporting cases of possible antitrust violations to the Attorney General, each agency will transmit the documents and statements enumerated below (the expression "suspect bids" or variations thereof, as used below, while ordinarily

referring to identical bids, shall also be deemed to include bids where "follow the leader" pricing, rotated low bids, or any other bid device intended to deprive the Government of the benefit of full and free competition is used):

(a) One copy of the invitation for bids and any amendments thereto.

(b) An abstract of all bids received for each item covered by the bid invitation for which suspect bids were received, showing for each such item—

(1) The unit and total price bid.

(2) The net price to the Government after discounts and allowance for transportation, or other costs, are absorbed by the bidder.

(3) The name of the manufacturer of the item or the source of supply if the bidder is a dealer or distributor, and the location of the plant from which shipment will be made. Where identical bids are filed by dealers, distributors, or jobbers representing the same manufacturer or supplier, they frequently indicate adherence to the supplier's list or suggested price to the Government. Unless the procurement agency has some evidence that such identical bids resulted from collusion or concert of action among the bidders they need not be reported to the Attorney General.

(4) The destination of shipments, and whether the price quoted includes or excludes the cost of transportation to destination.

(5) The identity of the successful bidder, and, where identical low bids were submitted by several bidders, an indication of how the award was made.

(c) Copies of documents filed by suspect bidders as part of the bid submission or obtained by the procuring agency such as the following—

(1) Contracts with contingent fee representatives who acted on behalf of one or more of the bidders who submitted identical bids or assisted them in the preparation of their bids.

(2) Correspondence or other evidence of patent rights owned or licensed by bidders quoting identical prices.

(3) Evidence of the existence of financial or other ties between bidders submitting suspect bids as revealed by Dun and Bradstreet or other reliable financial reports.

(4) Any pertinent financial or corporate information concerning the suspect bids as may be contained in financial statements or annual reports to stockholders.

(d) Copies of reports containing the findings of any special investigations conducted by the procurement agency concerning the bids reported.

(e) Copies of any correspondence between the procurement agency and the suspect bidders revealing the factors responsible for the filing of suspect bids, or explaining the prices bid.

**§ 1-1.903 Additional information.**

In addition to the documentary matter described above, the following information must be submitted, or appropriate remarks made, to the degree available, with respect to each suspected antitrust violation:

(a) Where there is a prior pattern of procurement of the item for which

## PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

### Subpart 1-2.3—Submission of Bids

- Sec.  
 1-2.301 [Reserved.]  
 1-2.302 Late bids, modifications, and withdrawals.  
 1-2.302-1 General.  
 1-2.302-2 Consideration of late bids for award.  
 1-2.302-3 Determining time of mailing of mailed bids.  
 1-2.302-4 Telegraphic bids.  
 1-2.302-5 Hand-carried and other bids.  
 1-2.302-6 Notification of bidders.  
 1-2.302-7 Disposition of late bids.  
 1-2.302-8 Records on late bids.  
 1-2.302-9 Late modifications and withdrawals.  
 1-2.302-10 Inconsistencies in standard forms.

### Subpart 1-2.3—Submission of Bids

- § 1-2.301. [Reserved.]  
 § 1-2.302 Late bids, modifications, and withdrawals.  
 § 1-2.302-1 General.

(a) This section prescribes policies and procedures governing executive agencies in the treatment of late bids, late modifications of bids, and late withdrawals of bids, received in response to formal advertising.

(b) Bids, modifications of bids, and withdrawals of bids, received at the office designated in the invitation for bids after the exact time specified for receipt of bids, are deemed, respectively, late bids, late modifications, and late withdrawals.

#### § 1-2.302-2 Consideration of late bids for award.

A late bid shall be opened and considered for award only if received before award and:

(a) It is determined that its lateness was due solely to—

(1) Delay in the mails for which the bidder was not responsible; or

(2) Delay by the telegraph company through no fault or neglect on the part of the bidder; provided, that the invitation for bids specifically authorized telegraphic bids; or

(b) It is determined that the bid, if submitted by mail or telegram, was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time specified for receipt, and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.

#### § 1-2.302-3 Determining time of mailing of mailed bids.

(a) The time of mailing of late bids shall be determined as follows:

(1) The date and hour shown in a post office cancellation stamp or in a stamp affixed by an approved metering device will be considered as the time of mailing.

(2) In the event of conflict between a post office cancellation stamp and a stamp of a metering device, the post office cancellation stamp will govern.

(3) Except as provided in (5) and (6), below, if the envelope or other outer

covering shows the date but not the hour of mailing, the time of mailing will be considered to be the last minute of the date shown.

(4) Except as provided in (5) and (6), below, if the envelope or other outer covering does not show the date of mailing, the bid will be presumed to have been mailed too late to be received in time.

(5) Information regarding the date and hour of mailing registered mail, when not ascertainable from the post office cancellation stamp, shall be obtained from the postal authorities indicated in (b), below (the time of registration of registered mail is prima facie evidence of the time of mailing).

(6) If the bidder before award demonstrates the time of mailing by clear and convincing evidence, which includes substantiation by the post office of mailing, the time thus demonstrated will be considered the time of mailing.

(b) Information concerning the normal time for mail delivery, and the date and hour of mailing of registered mail, shall be obtained from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office serving the contracting activity. When time permits, such information shall be obtained in writing.

#### § 1-2.302-4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received by the time specified in the invitation for bids, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late.

#### § 1-2.302-5 Hand-carried and other bids.

A late hand-carried bid, or any other late bid not submitted by mail or telegram, shall not be considered for award.

#### § 1-2.302-6 Notification of bidders.

Upon receipt of any late bid which is received before award, but which, on the basis of information then available, cannot then be considered for award under section 1-2.302-2, the bidder shall be notified promptly that the bid was received late. Such notification shall include substantially the following information:

Your bid in response to Invitation for Bids No. \_\_\_\_\_ dated \_\_\_\_\_, was received after the time for opening specified in the invitation. Accordingly, the bid may not properly be considered unless clear and convincing evidence (including substantiation by the post office of mailing) is submitted promptly (and in any event before award) showing that failure of the bid to arrive on time was due solely to delay in the mails for which you were not responsible.

The notification may be appropriately modified in the case of late telegraphic bids.

suspect bids were received, indicate the procurement agency's annual dollar value or purchases of the item in each of the three calendar years preceding the year in which the suspect bids were received.

(b) With respect to purchases of the item in prior years, submit an abstract of all suspect bids received in response to each invitation for bids issued in the preceding three-year period, setting forth in such abstract the information described in section 1-1.902. If this information was submitted with a prior reference of identical bids to the Attorney General it will be necessary only to state that the information was submitted with a suspect bid reference of a specified date.

(c) Indicate whether the pattern of bidding in the three-year period preceding the receipt of the suspect bids reported appears to indicate such practices as bid rotation, sharing of the business, collusive bidding, or any other form of joint action. If such practices are indicated, explain in detail.

(d) If there are any known financial, personal, or other than personal relationships among any of the suspect bidders, describe them.

(e) Indicate if the Government's specifications for the item are so drawn that only a limited number of potential bidders are capable of meeting these specifications.

(f) Indicate whether the item is covered by active patents and if such patents are owned or controlled by any of the suspect bidders. If information is available, submit full details, including any evidence that patent control may have a bearing on price identity.

(g) If there are any known manufacturers or suppliers of the item who consistently avoid bidding on Government contracts, identify such suppliers or manufacturers and indicate whether the procurement agency has any knowledge as to the reasons why these firms avoid seeking Government business.

(h) Indicate if the prices bid by the suspect bidders are their published list prices or if they are prices applicable only to the particular bid. If the prices quoted by the suspect bidders are not their published list prices, state whether they appear to have been arrived at by the application of a uniform Government discount from list prices or by some other method of computation. If available, furnish photostatic copies of suspect bidders' and other bidders' price lists.

(i) Indicate whether it is known to be the general practice of the manufacturers of the item to adhere to pricing systems which may be characterized as delivered pricing, zone pricing, or basing point pricing. If the answer is in the affirmative, describe the nature of the pricing system used.

(j) Indicate whether, in the opinion of the procurement agency, the suspect or tie bids submitted appear to stem from collusion or conspiracy on the part of the suspect bidders, and, if so, explain the basis for this opinion.

**§ 1-2.302-7 Disposition of late bids.**

A late bid which is not considered for award shall be held unopened until after award and then returned to the bidder (unless other disposition is requested or agreed to by the bidder). However, an unidentified late bid may be opened solely for identification purposes, but it shall be resealed immediately and no bid information contained therein disclosed.

**§ 1-2.302-8 Records on late bids.**

The following material shall, if available, be included in the files of the contracting office with respect to each late bid:

- (a) A statement of the date and hour of mailing or filing;
- (b) A statement of the date and hour of receipt;
- (c) In the case of late bids considered, the envelope or other outer covering in which the bid was received;
- (d) The determination of whether or not the bid was considered, with supporting facts; and
- (e) A statement of the disposition of the bid.

**§ 1-2.302-9 Late modifications and withdrawals.**

(a) A late modification or late withdrawal shall be opened and considered, except as provided in (b), only if received before award and:

(1) It is determined that its lateness was due solely to—

- (i) Delay in the mails for which the bidder was not responsible; or
- (ii) Delay by the telegraph company through no fault or neglect on the part of the bidder; or

(2) It is determined that the modification or withdrawal, if submitted by mail or telegram, was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time specified for receipt and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.

(b) A modification received from an otherwise successful bidder shall be opened and, if such modification makes the terms more favorable to the Government and would not be prejudicial to other bidders, shall be considered at any time that such modification is offered. In determining whether late modifications or withdrawals should be considered, the rules stated for late bids in sections 1-2.302-3, 1-2.302-4, and 1-2.302-5 shall apply.

(c) Upon receipt of any late modification or withdrawal which is received before award, but which, on the basis of available information, cannot be considered effective under this section 1-2.302-9 (a) and (b), the bidder shall be notified promptly that the modification or withdrawal was received late. Such notification shall contain substantially the same information as stated for late bids in section 1-2.302-6.

(d) Late modifications and late withdrawals which are not considered as being effective shall be disposed of in the same manner as stated for late bids in

section 1-2.302-7, except that any modification received from an otherwise successful bidder shall be opened so as to determine whether it should be considered as stated in section 1-2.302-9 (b).

(e) Records of late modifications and late withdrawals shall be maintained as provided for late bids in section 1-2.302-8.

**§ 1-2.302-10 Inconsistencies in Standard forms.**

Pending the revision of Standard Form 22, Instructions to Bidders (Construction Contracts), Standard Form 30, Invitation and Bid (Supply Contract), and Standard Form 33, Invitation, Bid and Award (Supply Contract), this section 1-2.302 shall govern to the extent that the provisions of those forms are inconsistent with this section 1-2.302.

**PART 1-3—PROCUREMENT BY NEGOTIATION**

Sec. 1-3.000 Scope of part.

**Subpart 1-3.1—Use of Negotiation**

1-3.100 Scope of subpart.  
 1-3.101 General requirements for negotiation.  
 1-3.102 Factors to be considered in negotiated contracts.  
 1-3.103 Dissemination of procurement information.

**Subpart 1-3.2—Circumstances Permitting Negotiation**

1-3.200 Scope of subpart.  
 1-3.201 National emergency.  
 1-3.202 Public exigency.  
 1-3.203 Purchases not in excess of \$2,500. Personal or professional services.  
 1-3.204 Services of educational institutions.  
 1-3.205 Purchases outside the United States.  
 1-3.206 Medicines or medical supplies.  
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 1-3.209 Impracticable to secure competition by formal advertising.  
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 1-3.211 Purchases not to be publicly disclosed.  
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**Subpart 1-3.3—Determinations, Findings, and Authorities**

1-3.301 Determinations and findings required.  
 1-3.302 Form and requirements of determinations and findings; preservation of data.

**Subpart 1-3.4—Types of Contracts**

1-3.400 Scope of subpart.  
 1-3.401 Types of contracts.  
 1-3.402 Selection of contract type.  
 1-3.403 Fixed-price type contracts.  
 1-3.403-1 Firm fixed-price contract.  
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 1-3.405 Other types of contracts.  
 1-3.405-1 Time and materials contract.

Sec.  
 1-3.405-2 Labor-hour contract.  
 1-3.405-3 Letter contract.  
 1-3.405-4 Basic agreement.  
 1-3.405-5 Indefinite delivery type contracts.

**Subpart 1-3.5—[Reserved]**

**Subpart 1-3.6—Small Purchases**

1-3.600 Scope of subpart.  
 1-3.601 Purpose.  
 1-3.602 Policy.  
 1-3.603 Competition.  
 1-3.603-1 Solicitation.  
 1-3.603-2 Data to support small purchases.  
 1-3.604 Imprest funds (petty cash) method.  
 1-3.605 Order-Invoice-Voucher.  
 1-3.605-1 Standard Form 44.  
 1-3.605-2 Standard Forms 147 and 148.  
 1-3.606 Blanket purchase arrangements.  
 1-3.606-1 General.  
 1-3.606-2 Authority to use blanket purchase arrangements.  
 1-3.606-3 Establishment of account.  
 1-3.606-4 Documentation.  
 1-3.606-5 Agency implementation.  
 1-3.607 Interagency use of local term contracts.

**Subpart 1-3.7—[Reserved]**

**Subpart 1-3.8—Price Negotiation Policies and Techniques**

1-3.800 Scope of subpart.  
 1-3.801 Basic policy.  
 1-3.802 Preparation for negotiation.  
 1-3.803 Type of contract.  
 1-3.804 Conduct of negotiations.  
 1-3.805 Selection of offerors for negotiation and award.  
 1-3.806 Pricing individual contracts.  
 1-3.807 Cost, profit, and price relationships.  
 1-3.808 Pricing techniques.  
 1-3.808-1 General.  
 1-3.808-2 Price analysis.  
 1-3.808-3 Cost analysis.  
 1-3.808-4 Profit.  
 1-3.808-5 Subcontracting.  
 1-3.808-6 Sole source items.  
 1-3.809 Audit as a pricing aid.

**§ 1-3.000 Scope of part.**

(a) This part prescribes policies and procedures which shall be observed by executive agencies in connection with procurement by negotiation. While references are made in this part to authorizing sections of the Federal Property and Administrative Services Act of 1949, to further the objectives of consistency and uniformity in Government procurement practices, such references shall be deemed likewise as references to comparable requirements under applicable laws.

(b) This part sets forth the following policies and procedures:

- (1) The basic requirements for the procurement of property and services by means of negotiation;
- (2) The different circumstances under which negotiation is permitted;
- (3) Determinations and findings that may be required before a contract is entered into by negotiation;
- (4) Types of negotiated contracts and their use;
- (5) Price negotiation policies and techniques;
- (6) Negotiation of surplus labor area set-asides;
- (7) Negotiation of small business set-asides; and
- (8) Reporting of possible anti-trust violations.

**Subpart 1-3.1—Use of Negotiation****§ 1-3.100 Scope of subpart.**

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

**§ 1-3.101 General requirements for negotiation.**

No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

- (a) The contemplated procurement comes within one of the circumstances permitting negotiation;
- (b) Any necessary determinations and findings have been made;
- (c) Such clearance or approval as is prescribed by applicable agency procedures has been obtained; and
- (d) The prospective contractor has been determined to be responsible.

**§ 1-3.102 Factors to be considered in negotiated contracts.**

Whenever property or services are to be procured by negotiation, offers shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure full and free competition, consistent with the procurement of the required property or services, in accordance with the basic policies set forth in this Part 1-3, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Such offers shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the contracting officer. Negotiation shall thereupon be conducted with due attention being given to the following, and any other appropriate factors:

- (a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to production costs, including extra pay shift, multi-shift and overtime costs, and any other factor relating to the price, such as profits, cost of transportation, and cash discounts.
- (b) Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.
- (c) Consideration of the quality of the property or services offered, including the same or similar property or services previously furnished, with due regard to conformance with specification requirements.
- (d) Consideration of delivery requirements.
- (e) Discriminating use of price and cost analyses.
- (f) Investigation of price aspects of any important subcontract.
- (g) Individual bargaining, by mail or by conference.
- (h) Consideration of cost sharing.
- (i) Effective utilization in general of the most desirable type of contract.
- (j) Consideration of the size of the business concern.
- (k) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities.

(l) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area.

(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor.

(n) Consideration of the extent of subcontracting.

(o) Consideration of the existing and potential workload of the prospective supplier.

(p) Consideration of broadening the industrial base by the development of additional suppliers.

(q) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities.

**§ 1-3.103 Dissemination of procurement information.**

(a) Synopses of unclassified requests for proposals and contract awards shall be prepared and publicized in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," in accordance with procedures established by each agency.

(b) Promptly after making awards in any procurement in excess of \$10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other offeror.

(c) Classified information shall be furnished only in accordance with agency regulations governing the handling of classified information.

**Subpart 1-3.2—Circumstances Permitting Negotiation****§ 1-3.200 Scope of subpart.**

Subject to the limitations prescribed in this Subpart 1-3.2, or as otherwise provided by law, procurement may be effected by negotiation under any one of the exceptions contained in sections 302(c) (1) through 302(c) (15) of the Act.

**§ 1-3.201 National emergency.**

Pursuant to the authority of section 302(c) (1) of the Act, purchases and contracts may be negotiated if "determined to be necessary in the public interest during a period of national emergency declared by the President or by the Congress."

(a) *Duration.* Under present circumstances, authority of this section shall extend for the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950.

(b) *Application.* The authority of this section shall be used only to the extent of furthering the policy (enunciated in Defense Manpower Policy No. 4 (revised November 5, 1953, and amended July 27, 1955) and in Bureau of the Budget Bulletin No. 58-5, dated March 25, 1958) which encourages the placing

of contracts and facilities in areas of substantial labor surplus, and upon the determination of the head of the agency concerned that to do so is necessary in the public interest. Contracts entered into pursuant to this authority shall be negotiated in accordance with agency procedures.

**§ 1-3.202 Public exigency.**

Pursuant to the authority of section 302(c) (2) of the Act, purchases and contracts may be negotiated without formal advertising if "the public exigency will not admit of the delay incident to advertising."

(a) *Application.* In order for this authority to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the property or services to be purchased or contracted for were not furnished by a certain time, and when they could not be procured by that time by means of formal advertising. This applies irrespective of whether that urgency could or should have been foreseen. For example, this authority may be used when property or services are needed at once because of a fire, flood, explosion, or other disaster.

(b) *Limitations.* Every contract negotiated under this authority shall be accompanied by a signed statement of the contracting officer justifying its use. When purchase action under this authority is based on telephone or other oral offers, a written confirmation of the accepted offer shall be secured and made a part of the purchase case file. A record shall be established also in such cases containing the following information as a minimum: name and address of each offeror quoting, item description, unit price, delivery time, and discount terms. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the purchase file. Negotiation under this authority is subject to the preparation of appropriate determinations and findings prescribed in Subpart 1-3.3.

**§ 1-3.203 Purchases not in excess of \$2,500.**

Pursuant to the authority of section 302(c) (3) of the Act, purchases and contracts may be negotiated without formal advertising if "the aggregate amount involved does not exceed \$2,500."

(a) *Application.* Contracts or purchases aggregating \$2,500 or less shall be made under the authority of this section 1-3.203 rather than under any of the other authorities for negotiation. In arriving at the "aggregate amount involved" there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than \$2,500 shall not be broken down into several purchases or contracts of less than \$2,500.

(b) *Procedure.* Purchases and contracts aggregating not more than \$2,500

shall be made in accordance with Subpart 1-3.6.

**§ 1-3.204 Personal or professional services.**

Pursuant to the authority of section 302(c) (4) of the Act, purchases and contracts may be negotiated without formal advertising if "for personal or professional services."

(a) *Application.* This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by a concern); if professional services, they may be performed either by an individual contractor in person or a concern;

(2) The services are of a professional nature, or are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of applicable law.

(b) *Limitations.*

(1) The authority of this section 1-3.204, and the conditions imposed upon its use, shall not apply to the procurement by negotiation of any types of services authorized under any other provisions of this subpart.

(2) Use of authority of this section 1-3.204 for professional engineering, architectural and landscape architectural services for any public building or public improvement (exclusive of bridges, roads, sidewalks, sewers, mains, or similar items) the construction cost of which is estimated to be \$200,000 or more, shall be subject to prior clearance with the General Services Administration.

**§ 1-3.205 Services of educational institutions.**

Pursuant to the authority of section 302(c) (5) of the Act, purchases and contracts may be negotiated without formal advertising if "for any service to be rendered by any university, college, or other educational institution."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith.

(2) Experimental, developmental, or research work (including services, tests and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution; and reports furnished in connection therewith.

(3) Analyses, studies, or reports (statistical or otherwise) to be conducted or prepared by any university, college, or other educational institution.

**§ 1-3.206 Purchases outside the United States.**

Pursuant to the authority of section 302(c) (6) of the Act, purchases and contracts may be negotiated without formal

advertising if "the supplies or services are to be procured and used outside the limits of the United States and its possessions." This authority shall be used only for the procurement of property or services which are actually purchased from sources outside and used outside the limits of the United States, its Territories and possessions, such as property or services (including construction) for overseas installations or for the use of overseas personnel.

**§ 1-3.207 Medicines or medical supplies.**

Pursuant to the authority of section 302(c) (7) of the Act, purchases and contracts may be negotiated without formal advertising if "for medicines or medical supplies."

(a) *Application.* This authority shall be used only for such supplies as are peculiar to the field of medicine, including technical equipment, such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like.

(b) *Limitations.* Whenever the probable cost of property to be purchased by negotiation under this authority will exceed \$10,000, suitable advance publicity of the proposed purchase shall be given for a period of at least 15 days, wherever practicable. The requirement of "suitable advance publicity" shall be deemed to be complied with if circulation of notice of intent to negotiate is made to business concerns engaged in the manufacture and/or sale of the products involved, including qualified concerns known to have current interest in selling such products to the Government. Where desirable, publication of the intention to negotiate through newspapers or other similar media may be used to supplement circularization.

**§ 1-3.208 Property purchased for authorized resale.**

Pursuant to the authority of section 302(c) (8) of the Act, purchases and contracts may be negotiated without formal advertising if "for property purchased for authorized resale."

(a) *Application.* This authority shall be used only for purchases for resale through commissaries or other similar facilities, and ordinarily only for purchases of articles with brand names or of a proprietary nature as required by patrons of the selling activities.

(b) *Limitations.* Whenever the probable cost of property to be purchased by negotiation under this authority will exceed \$10,000, suitable advance publicity of the proposed purchase shall be given for a period of at least 15 days, wherever practicable. This shall be accomplished in the manner set forth in section 1-3.207(b). When exercising this authority, regardless of the probable cost, competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition, consistent with the type and character of the procurement.

**§ 1-3.209 Subsistence supplies.**

Pursuant to the authority of section 302(c) (9) of the Act, purchases and con-

tracts may be negotiated without formal advertising if "for perishable or non-perishable subsistence supplies."

(a) *Application.* The authority of this paragraph may be used for the purchase of any and all kinds of subsistence supplies.

(b) *Limitation.* When exercising this authority, competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition, consistent with the type and character of the procurement.

**§ 1-3.210 Impracticable to secure competition by formal advertising.**

Pursuant to the authority of section 302(c) (10) of the Act, purchases and contracts may be negotiated without formal advertising if "for supplies or services for which it is impracticable to secure competition."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) When property or services can be obtained from only one person or firm (sole source of supply).

(2) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances.

(3) When bids have been solicited pursuant to the requirements of formal advertising, and no responsive bid has been received from a responsible bidder.

(4) When bids have been solicited pursuant to the requirements of formal advertising and the responsive bid or bids do not cover the quantitative requirements of the invitation for bids, in which case, negotiation is permitted for the remaining requirements of the invitation for bids.

(5) When the contemplated purchase is for training film, motion picture productions, or manuscripts.

(6) When the contemplated contract is for technical nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) When the contemplated contract involves maintenance, repair, alteration, or inspection and the exact nature or amount of the work to be done is not known.

(8) When the contemplated contract is for studies or surveys other than those which may be negotiated under sections 302(c) (5) or (11) of the Act.

(9) When the contemplated contract is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal invitation for bids.

(10) When the contemplated contract is for commercial ocean or air transportation, including time charters, space charters, and voyage charters over trade routes not covered by common carriers (negotiation for transportation services when the services can be procured from common carriers is author-

ized by section 321 of the Transportation Act of 1940 (49 U.S.C. 65)—see section 1-3.215), and including services for the operation of Government-owned vessels or aircraft.

(11) When it is impossible to draft for an invitation for bids adequate specifications or any other adequately detailed description of the required property or services.

(12) When the contemplated contract is for services related to the procurement of perishable subsistence, such as protective storage, icing, processing, packaging, handling, and transportation, and it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence.

(b) *Limitations.* Each contract negotiated under this authority shall be accompanied by a signed statement of the contracting officer justifying its use.

**§ 1-3.211 Experimental, developmental, or research work.**

Pursuant to the authority of section 302(c)(11) of the Act, purchases and contracts may be negotiated without formal advertising if "the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) When the contemplated contract relates to theoretical analysis, exploratory studies, and experimentation in any field of science or technology.

(2) When the contemplated contract is for developmental work and calls for the practical application of investigative findings and theories of a scientific or technical nature.

(3) When the contemplated contract is for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experimentation, development, research, or test.

(4) When the contemplated contract is for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

(b) *Limitations.* This authority shall not be used for contracts for quantity production, except that such quantities may be purchased as are necessary to permit complete and adequate experimentation, development, research, or test. Research or development contracts which call for the production of a reasonable number of experimental or test models or prototypes shall not be regarded as contracts for quantity production. Negotiation under this authority is also subject to the preparation of appropriate determinations and findings prescribed by Subpart 1-3.3.

**§ 1-3.212 Purchases not to be publicly disclosed.**

Pursuant to the authority of section 302(c)(12) of the Act, purchases and contracts may be negotiated without formal advertising if "for property or serv-

ices as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed."

(a) *Application.* This authority shall be used only when required by considerations of national security.

(b) *Limitations.* Negotiation under this authority is subject to the preparation of appropriate determinations and findings prescribed by Subpart 1-3.3.

**§ 1-3.213 Technical equipment requiring standardization and interchangeability of parts.**

(a) *Authority.*

(1) Pursuant to the authority of section 302(c)(13) of the Act, purchases and contracts may be negotiated without formal advertising if "for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest."

(2) This section 1-3.213 provides authority only to employ negotiation as distinguished from advertising and does not constitute authority to make purchases of equipment. The latter must be elsewhere derived.

(b) *Application.*

(1) This authority may be used for purchasing additional units and replacement items of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where, in special situations or in particular localities, such standardization and interchangeability is determined necessary in the public interest. Examples of situations where this authority may be used are:

(i) Where, in special situations or in particular localities, it has been found necessary to limit the variety and quantity of parts that must be carried in stock.

(ii) Where standardization of technical equipment is necessary in special situations or in particular localities so that parts may be available and interchanged among items of damaged or worn equipment.

(iii) Where, in special situations or particular localities, technical equipment is available from a number of suppliers which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(2) Consideration shall be given to the following and other pertinent factors before making a determination to procure specified makes and models under the authority of this section 1-3.213:

(i) The practicability of interchanging parts and cannibalizing equipment.

(ii) The probability that future procurement of the selected item of

equipment can be effected at reasonable prices.

(iii) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock.

(iv) The value of similar equipment and its supporting parts on hand.

(v) Possible savings in training personnel.

(vi) Whether the standardization will adversely affect existing specifications and standards.

(vii) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model already in the supply system.

(3) Standardization approval under this authority shall be for a stated period of time which bears a reasonable relationship to the life of the equipment.

(c) *Justification.*

(1) In arriving at a determination that standardization of equipment and interchangeability of its parts are necessary in the public interest, such standardization must be in fact fully justified as genuinely "necessary in the public interest." It is not sufficient that it merely be generally desirable. Nor is an arbitrary or perfunctory conclusion sufficient. Facts must clearly show the compelling reasons why it is necessary, as for example:

(i) Substantial savings possible through standardization (estimated annual savings to be indicated when possible).

(ii) Minimizing potential breakdown of a specifically identified service or function which might endanger life, property or the orderly conduct of vital Government functions.

(2) The term "in special situations" precludes application of the authority to generally prevailing or generalized conditions. The law assumes that it will be necessary to employ the authority only under unusual or abnormal conditions.

(3) The term "particular localities" has reference to remote locations which are not only remote in the sense of physical distance from large metropolitan areas, but remote from available stocks of replacement parts and, possibly, related service facilities. For example, it is not enough to conclude that standardization is required of a motor vehicle in Alaska because of remote location if in fact replacement parts of various vehicle makes are readily available. It must be shown expressly, and not by inference, (i) that the location involved is inaccessible because of stated conditions, such as the absence of a connected road system, or (ii) that there are not available within stated reasonable distances, adequate stocks of replacement parts or personnel and facilities necessary to perform required services, and that there are circumstances which make it impractical to maintain at the location such stocks and furnish such service for more than a particular number of makes of vehicles. Most using activities within the United States (excluding Alaska) could not be considered to meet these requirements. However, there may be

cases where, because of extremely unusual conditions, standardization at a particular location within the United States may be necessary in the public interest.

(d) *Limitations.*

(1) This authority shall not be used for initial procurement of equipment and spare parts which ultimately will be standardized, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless and until the agency head has determined that:

(i) The equipment constitutes technical equipment;

(ii) Standardization of such equipment and interchangeability of its parts are necessary in the public interest; and

(iii) Negotiation is necessary in special situations or in particular localities in order to assure required standardization of equipment and interchangeability of parts.

(e) *Determination and findings.*

(1) Negotiation under this authority is subject to the requirement for preparation of appropriate determinations and findings as provided by Subpart 1-3.3.

(2) The following example of findings and determinations is illustrative of the type and amount of information which may be considered sufficient to justify negotiation under section 302(c)(13) of the Act:

DEPARTMENT OF THE INTERIOR

FINDINGS AND DETERMINATIONS UNDER SECTION 302(C)(13) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

*Findings*

In accordance with the requirements of section 302(c)(13) and 307 of the Federal Property and Administrative Services Act of 1949, I make the following findings:

1. The Alaska Road Commission has stated that it has a requirement for 25 \_\_\_\_\_

(Make and \_\_\_\_\_ trucks as set forth in (letter) or (req-type)

dated \_\_\_\_\_, and has submitted, by letter dated \_\_\_\_\_, signed by \_\_\_\_\_, information in justification for such purchase under section 302(c)(13), as described or included in the findings set forth below.

2. The trucks in question are required for use at \_\_\_\_\_, Alaska. This location is accessible only by \_\_\_\_\_

(District or area) \_\_\_\_\_ and for several months or "boat and air" etc.)

(Indicate: i.e. "boat" \_\_\_\_\_ each year is accessible only by \_\_\_\_\_

The Government's operations which consist of \_\_\_\_\_, require the use of \_\_\_\_\_

(General description only) \_\_\_\_\_ of trucks of this type. The location presently has \_\_\_\_\_ of these trucks with stocks of spare parts determined necessary from experience to maintain these trucks in proper operational efficiency. There are also \_\_\_\_\_ trucks of other manufacture with required stocks of spare parts which will gradually be eliminated by standardization. No commercial supply or service centers are maintained at this remote location or within approximately \_\_\_\_\_ miles thereof.

3. It is impractical to provide service and repair facilities for numerous makes of vehicles and to maintain stocks of parts necessary to keep the various makes in operat-

ing condition. Each make of vehicle usually requires additional special equipment for proper servicing and repair. This results in added cost, housing, and related administrative expense. Similarly each additional make requires the maintenance of separate stocks of spare service and repair parts which require additional bins, storage, and clerical and administrative expenses. The annual savings in cost estimated to result from the maintenance of reduced stocks of parts made possible by standardizing on these trucks is \_\_\_\_\_

4. (State other factors and details as applicable.)

5. Under these circumstances the Alaska Road Commission regards the standardization and interchangeability as necessary in the public interest.

*Determinations*

1. Based upon the foregoing findings, I hereby determine, within the meaning of section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, that:

A. The equipment described is technical equipment;

B. Negotiation is necessary, in the situation and in the locality described, in order to assure standardization of the equipment and interchangeability of parts; and

C. Such standardization and interchangeability is necessary in the public interest.

2. Upon the basis of these findings and determinations, I hereby authorize the negotiation of a contract (or contracts) for procurement of the equipment described in these findings pursuant to section 302(c)(13) of the Federal Property and Administrative Services Act of 1949.

Secretary of the Interior.

§ 1-3.214 Negotiation after advertising.

Pursuant to the authority of section 302(c)(14) of the Act, purchases and contracts may be negotiated without formal advertising if "for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or some part of the requirements) or have not been independently arrived at in open competition."

(a) *Application.* This authority is designed to cope with cases where bids received after advertising are too high, although not actually identical or apparently collusive, and cases of apparent violation of antitrust laws or collusive bidding are to be reported in accordance with procedures prescribed in Subpart 1-1.9 of this chapter. Where, after advertising, some of the bids do not appear reasonable, and the reasonable bids do not cover the full quantity required, the contracting officer may, at his discretion, accept the reasonable bids. Rejection of the bids not accepted and negotiation for the balance of the quantity required must be preceded by the determination required by this section 1-3.214. Negotiation for the balance is subject also to the requirements of section 1-3.214(b).

(b) *Limitations.* After appropriate determination, and after rejection of bids, no contract shall be negotiated under this authority unless:

(1) Notification of intention to negotiate and reasonable opportunity to negotiate have been given to each responsible bidder which submitted a bid in response to the invitation for bids; and

(2) The negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 1-3.215 Otherwise authorized by law.

Pursuant to the authority under section 302(c)(15) of the Act, purchases and contracts may be negotiated without formal advertising if "otherwise authorized by law." This provision preserves the authority to negotiate contracts conferred by other legislation. The following are typical examples:

(a) Mutual Security Act of 1956 (22 U.S.C. 1750).

(b) Small Business Act (Public Law 85-536).

(c) Section 321 of the Transportation Act of 1940 (49 U.S.C. 65). (This law permits negotiation for transportation services when the services required can be procured from any common carrier. This authority shall not be used to eliminate competition from companies which are not common carriers when the services may also be performed by such companies.)

When negotiating pursuant to other statutory authority, the purchase or contract instrument should cite the applicable law authorizing negotiation.

Subpart 1-3.3—Determinations, Findings, and Authorities

§ 1-3.301 Determinations and findings required.

In addition to the required determinations and findings set forth in Subpart 1-3.2, the following determinations in connection with entering into contracts by negotiation are required to be made in writing, supported by written findings as specified in section 1-3.302:

(a) The determination required by section 304(b) of the Act as to estimated cost of and fees to be paid under cost-plus-a-fixed fee contracts;

(b) The determination required by section 304(b) of the Act that use of a cost or a cost-plus-a-fixed fee, or incentive-type contract, is likely to be less costly than other methods, or that it is impracticable to secure property or services of the kind or quality required without use of such a contract; and

(c) The determination required by section 303(b) of the Act that it is in the public interest to reject all bids.

§ 1-3.302 Form and requirements of determinations and findings; preservation of data.

(a) Each determination or decision required under section 1-3.211 through section 1-3.214 and section 1-3.301 shall be based on written findings made by the official making such determination or decision, which findings shall be final, and available for a period of at least six years following the date of the determination or decision. A copy of such findings shall be filed with the General Accounting Office copy of the contract.

(b) The form of determination and findings required shall be sufficient to satisfy the requirements of the applicable provisions of law, and shall be in such form as may be prescribed in agency instructions.

(c) The use of negotiation under sections 1-3.202 and 1-3.210 shall be accompanied by a signed statement of the contracting officer justifying the use of negotiation, a copy of which must be filed with the General Accounting Office copy of the contract.

(d) In any case where a purchase or contract is negotiated under section 1-3.201 and sections 1-3.207 through 1-3.214, data with respect to negotiation shall be preserved in the files for a period of six years following final payment on such purchase or contract. Such data shall be sufficient to show:

(1) The reason and basis for use of negotiation;

(2) The extent of competition secured; and

(3) Other essential information bearing on the actual negotiations.

(e) Where in other cases of negotiation, the requirements of paragraph (a), (c), and (d) of this section 1-3.302 are not applicable, final data shall nevertheless be made a part of the file to support the action taken. This includes the informal records required with respect to purchases resulting from oral offers.

### Subpart 1-3.4—Types of Contracts

#### § 1-3.400 Scope of subpart.

This subpart (a) describes and defines types of contracts for procurement by negotiation, (b) defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract, and (c) imposes conditions on the use of certain of the available types of contracts.

#### § 1-3.401 Types of contracts.

Contracts negotiated under this Part 1-3 may be of any of the types or combination of types described in this Subpart 1-3.4, which will promote the best interests of the Government, subject to the following restrictions. The cost-plus-a-percentage-of-cost system of contracting shall not be used. In furtherance of this policy, all prime contracts and letter contracts, on other than a firm fixed-price basis, shall by an appropriate clause prohibit cost-plus-a-percentage-of-cost subcontracts. In addition, all cost-plus-fee subcontracts under prime contracts which are on other than a firm fixed-price basis shall limit the payment of fees to those prescribed by agency procedures within the limitations of section 304 of the Act.

#### § 1-3.402 Selection of contract type.

(a) The firm fixed-price contract shall be used unless, under the applications and limitations contained in this Subpart 1-3.4, the use of another type of contract is more appropriate. However, the selection of an appropriate type of contract is of primary importance in obtaining fair and reasonable prices under all of the circumstances. The type of contract therefore has a direct effect upon the resulting price or cost to the Government. Type of contract and pricing are inter-related and should be so considered together in negotiation, in accordance with the provisions of section 1-3.303.

(b) In determining the type of contract to be utilized, consideration should be given to such factors as:

(1) Type and complexity of the item.

(2) Urgency of the requirement.

(3) The period of contract performance and the length of production run.

(4) Degree of competition present.

(5) Difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience, or the instability of design.

(6) Availability of comparative price data, or lack of firm market prices or wage levels.

(7) Prior experience with the contractor.

(8) Extent and nature of subcontracting contemplated.

(9) Assumption of business risk.

(10) Technical capability and financial responsibility of the contractor.

(11) Administrative costs of both parties.

(c) Early agreement should be reached between the Government and the contractor on the type of contract best suited to the procurement. Except in the case of a firm fixed-price contract, contract files shall include documentation to show the reasons why the particular contract type was utilized.

#### § 1-3.403 Fixed-price type contracts.

The fixed-price type contract generally provides for a firm price, or under the appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. Fixed-price contracts are of types so designed as to facilitate proper pricing under varying circumstances.

##### § 1-3.403-1 Firm fixed-price contract.

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth in this section 1-3.403-1, places the maximum risk and responsibility upon the contractor and affords him the greatest incentive for efficient performance with the resultant benefit in earnings. Utilization of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Applicability.* The firm fixed-price contract is suitable for use in procurements when stable and reasonably definite specifications are available and when fair and reasonable pricing can be achieved, such as where (1) adequate competition has made initial quotations effective; (2) prior purchases of the same or similar supplies or services provide reasonable price comparison; (3) experienced cost information or sound estimates of the probable cost of performance are available in the negotiation of contract prices; or (4) any other reliable basis for proper pricing can be utilized consistent with the purpose of this type of contract. The firm fixed-price contract is particularly suitable in the purchase of standard

commercial items, modified commercial items, or other items for which adequate information on production and cost is available.

(c) *Limitation.* The firm fixed-price contract shall not be used when contingencies proposed in the contract price are considered unreasonable.

##### § 1-3.403-2 Fixed-price contract with escalation.

(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. These contingencies should be limited to those beyond the normal control of the contractor. The business risk of the contractor in a fixed-price contract is reduced by the inclusion of escalation provisions in which the Government agrees to revise the stated price upon the happening of the prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types.

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Applicability.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration.

(1) Price escalation may be used under the conditions stated above when the items to which escalation will be applied are standard materials or articles normally sold at "established" or "published" prices in a competitive commercial market or are modifications thereof, the prices of which can be reasonably related to the prices of such standard materials or articles.

(2) Labor and material escalation generally is suitable for use when the types and kinds of labor and material that the contractor intends to use in the performance of a contract that covers an extended period of time prevents him from accepting the full risk of possible

cost increases and the Government is unwilling to accept the proposed contingency factors.

(c) *Limitation.* Escalation shall not be used to provide protection against contingencies arising from the lack of accurate estimates of the quantities of labor or material required for performance of the contract.

#### § 1-3.404 Cost-reimbursement type contracts.

(a) *Description.* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds, and a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Applicability.* The cost-reimbursement type contract is suitable for use when the nature and complexity of the procurement is such that costs of performance cannot be estimated with reasonable accuracy. In addition, it is essential that the contractor's cost accounting system is adequate for the determination of costs applicable to the contract, and appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination that:

(1) Such method of contracting is likely to be less costly than other methods; or

(2) It is impractical to secure property or services of the kind or quality required without the use of such type of contract.

#### § 1-3.404-1 Cost contract.

(a) *Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Applicability.* The following are illustrative situations in which the use of this type of contract may be appropriate:

(1) Research and development work, particularly with nonprofit educational institutions or other non-profit organizations.

(2) Facilities contracts.

(3) Initial small quantity procurements of new items with anticipated subsequent large production runs.

#### § 1-3.404-2 Cost-sharing contract.

(a) *Description.* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs.

(b) *Applicability.* A cost-sharing contract is suitable for those procurements which cover production or research projects which are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this bene-

fit, the contractor agrees to absorb a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable:

(1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations.

(2) Other research and development work where the results of the contract may have commercial benefit to the contractor.

#### § 1-3.404-3 Cost-plus-a-fixed-fee contract.

(a) *Description.* The cost-plus-a-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

(b) *Applicability.* The cost-plus-a-fixed-fee contract is suitable for use when a cost-reimbursement type of contract is appropriate as provided in section 1-3.404(b), and when the parties agree that the procurement should be profit bearing in the form of a fixed fee. The following are illustrative situations in which this type of contract may be appropriate:

(1) Research and development work where the scope and nature thereof cannot be definitely specified.

(2) Definite specifications exist but the contractor lacks a valid basis for estimating costs because the property called for is not an item regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing level for the remainder of the production.

(3) Production or construction contracts where the specifications are not complete or where major changes substantially affecting the scope of the work are expected.

(4) Work to be performed in a Government-owned plant with the use of Government-owned facilities.

(c) *Limitations.* The fixed fees shall not exceed those prescribed by agency procedures within the limitations of section 304 of the Act.

(d) *Contractors' investment in work-in-process.* It is the policy of the executive branch of the Government that contractors having cost-reimbursement type contracts should maintain a reasonable investment in the property and facilities acquired and in the services rendered in the performance of such contracts. This investment provides a strong incentive for the contractor to strive for greater efficiency and economy and better management, with resultant lower costs to the Government.

(1) In keeping with this policy, cost-reimbursement type contracts other than those set forth below shall provide for interim payment of not to exceed 80 percent of the costs incurred by the contractor in the performance of the contract:

(i) Contracts under which the contractors receive no fee or profit.

(ii) Contracts with educational institutions or nonprofit organizations.

(iii) Contracts solely for the operation of Government-owned plants or vessels.

(iv) Contracts with small business concerns.

(v) Contracts for research and development which do not provide for quantity production.

(vi) Contracts for performance outside the United States, its Territory, its possessions, and Puerto Rico.

(vii) Contracts having an estimated cost not in excess of \$250,000.

(viii) Contracts for construction and architect-engineer services.

(ix) As determined by the agency head concerned, contracts in which the applications of the policy would impose undue hardship on the contractor or adversely affect the interests of the Government.

(2) An appropriate clause implementing this policy shall be inserted in all cost-reimbursement type supply contracts.

(3) Application of this policy need not affect the method of payment of the fee, but the extent of the contractor's capital investment in the performance of the contract will be taken into consideration in fixing the amount of fee or profit.

#### § 1-3.404-4 Cost-plus-incentive-fee contract.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement-type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed as an incentive to the contractor to increase the efficiency of performance.

(b) *Applicability.* The cost-plus-incentive-fee contract is suitable for use where a cost-reimbursement-type of contract is found necessary and where there is a probability that its use will result in lower costs to the Government than other forms of cost-reimbursement-type contracts through cost reduction incentive to the contractor.

(c) *Limitation.* The target and the maximum fee shall be subject to the administrative limitations stated in section 1-3.404-3(c).

(d) *Contractors' investment in work-in-process.* See section 1-3.404-3(d).

#### § 1-3.405 Other types of contracts.

##### § 1-3.405-1 Time and materials contract.

(a) *Description.* The time and materials type of contract provides for the procurement of property or services on

the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) and (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract may establish either a price ceiling, or a ceiling amount which the contractor may not exceed (except at his own risk).

(b) *Applicability.* The time and materials contract is used only in those situations where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any substantial accuracy. Particular care should be exercised in the use of this type of contract since its nature does not encourage efficiency. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of property; (2) the engineering, design, and manufacturer of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance, or overhaul work; and (4) work to be performed in emergency situations.

(c) *Limitation.* This type of contract may be used only after determination that no other type of contract will suitably serve.

#### § 1-3.405-2 Labor-hour contract.

(a) *Description.* The labor-hour type of contract is a variant of the time and material type contract differing only in that materials are not involved in the contract or are not supplied by the contractor.

(b) *Applicability.* The labor-hour type of contract is applicable in those procurements described for the time and materials type contract, but in situations in which contractor-furnished materials are not involved.

(c) *Limitations.* This type of contract may be used only after determination that no other type of contract will suitably serve.

#### § 1-3.405-3 Letter contract.

(a) *Description.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of property, or performance of services, including, but not limited to, preproduction planning, and the procurement of necessary materials.

(b) *Applicability.* A letter contract may be entered into when (1) the interests of the Government demand that the contractor be given a binding commitment so that work can be commenced immediately, and (2) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible, as, for example, when the nature of the work involved prevents the preparation of definitive requirements, specifications, or cost data.

ation of definitive requirements, specifications, or cost data.

#### (c) *Limitations.*

(1) A letter contract shall be used only after a determination in accordance with agency procedures that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable.

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date. Executive agencies shall prescribe the limit of effectiveness of letter contracts.

(4) The maximum liability of the Government stated in the letter contract generally shall not exceed 50% of the total estimated cost of the procurement, but this liability may be increased in accordance with agency procedures.

(d) *Content.* Letter contracts shall be specifically negotiated and shall, as a minimum requirement, include agreement as to the following:

(1) That the contractor will proceed immediately, with performance of the contract, including procurement of necessary materials;

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default;

(3) That the contractor is not authorized to expend moneys or incur obligations in excess of the maximum liability of the Government as stated in the letter contract;

(4) The type of definitive contract;

(5) As many definitive contract provisions as possible;

(6) That the contractor shall provide such price and cost information as may reasonably be required by the contracting officer; and

(7) That the contractor and the Government shall promptly enter into negotiations in good faith to reach agreement upon and execute a definitive contract.

#### § 1-3.405-4 Basic agreement.

(a) *Description.* A basic agreement is a written instrument of understanding executed between a procuring agency and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirement of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement, as required or applicable.

#### (b) *Applicability.*

(1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) *Amendment or supersession:* A basic agreement shall be amended only by an amendment of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. As a minimum, basic agreements will be reviewed annually on the anniversary of their effective date and revised at that time to conform with the current requirements of this chapter. Amendments shall not have retroactive effect.

(3) *Discontinuance of basic agreement:* Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

#### (c) *Limitations.*

(1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved. Basic agreements shall not be used in any manner to restrict competition.

(3) Basic agreements shall be utilized only in connection with negotiated contracts.

#### § 1-3.405-5 Indefinite delivery type contracts.

One of the following indefinite delivery type contracts may be used for procurements where the exact time of delivery is not known at time of contracting.

#### (a) *Definite quantity contracts:*

(1) *Description.* This type of contract provides for a definite quantity of specified property or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order. Depending on the situation, the contract may provide for: (i) firm fixed-prices or (ii) price escalation.

(2) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of property or services will be required during a specific period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

#### (b) *Requirements contract.*

(1) *Description.* This type of contract provides for filling all actual purchase requirements of specific property or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) firm fixed-prices or (ii) price escalation. An estimated total quantity is stated for

the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

- (i) Flexibility with respect to both quantities and delivery scheduling;
- (ii) Supplies or services need be ordered only after actual needs have materialized;
- (iii) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;
- (iv) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and
- (v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

(c) *Indefinite quantity contract.*

(1) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) firm fixed-prices or (ii) price escalation. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the property or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. When large individual orders or orders from more than one activity are anticipated, the contract may specify

the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

- (i) Flexibility with respect to both quantities and delivery scheduling;
- (ii) Property or services need be ordered only after actual needs have materialized;
- (iii) The obligation of the Government is limited; and
- (iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

### Subpart 1-3.5—[Reserved]

### Subpart 1-3.6—Small Purchases

#### § 1-3.600 Scope of subpart.

This subpart prescribes policies and procedures for the purchasing of supplies and nonpersonal services from commercial sources when the aggregate amount involved in any one transaction does not exceed \$2,500. Such purchases shall be termed "small purchases." This subpart is not applicable to the procurement of supplies and services initially estimated to exceed \$2,500 even though awards under such procurements do not exceed \$2,500.

#### § 1-3.601 Purpose.

The objectives of the simplified purchase methods prescribed herein are to reduce the administrative costs in accomplishing small purchases, to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts, and to eliminate costly and time consuming paper processes.

#### § 1-3.602 Policy.

(a) Small purchases shall be made by negotiation, except under special circumstances where it is clearly in the best interest of the Government to accomplish such purchases by more formal methods.

(b) The objective of helping small concerns to participate in Government contracting has wide potential application where small purchases are concerned, and accordingly, placement of small purchases with small concerns is specifically encouraged, consistent, of course, with other valid considerations, such as price feasibility.

(c) When quotations are received on a number of related items (such as hardware items, spare parts for vehicles, or office supplies, etc.), one purchase order shall normally be issued to the firm quot-

ing the lowest aggregate prices rather than issuing more than one purchase order on the basis of accepting the lowest quotation on each item.

(d) In arriving at the aggregate amount involved in any one transaction, there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Requirements aggregating more than \$2,500 shall not be broken down into several purchases which are less than \$2,500 merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under this subpart.

(e) Any one of the purchase methods set forth in this subpart which is determined the most suitable to the immediate requirement and which will accomplish the procurement in the most efficient and economical manner shall be utilized.

#### § 1-3.603 Competition.

##### § 1-3.603-1 Solicitation.

(a) Reasonable competition means obtaining a sufficient number of quotations from qualified sources of supply so as to assure that the procurement is fair to the Government, price and other factors considered, including the administrative cost of the purchase. In arriving at the number of quotations to be solicited, due consideration will be given to the cost of the proposed solicitation in relation to the potential benefits to be derived by the Government, consistent with good business.

(b) Reasonable coverage of the market for small purchases does not ordinarily require going outside the trade area in which the procurement office is located to obtain quotations. However, competition shall not be limited to suppliers of well-known and widely distributed makes or brands, nor shall quotations be solicited purely on a selective personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, when appropriate, added to the list of available sources.

(c) The following factors influence the number of quotations required in connection with any particular purchase:

- (1) The nature of the article or service to be procured, and whether highly competitive and readily available in several makes or brands, or relatively noncompetitive.
- (2) Information obtained in making recent purchases of the same or similar item.
- (3) The urgency of the proposed purchase.
- (4) The dollar value of the proposed purchase.
- (5) Past experience concerning specific dealers' prices.

(d) Solicitation of quotations may be effected orally or in writing. Written solicitation should be used only in such circumstances as where (1) the suppliers are located outside the local area, (2) special specifications are involved, (3) a large number of items are included in a single proposed procurement, or (4) ob-

taining oral quotations is not considered efficient.

(e) Where it is the practice for suppliers to furnish standing price quotations on supplies or services required on an intermittent and recurring basis, this information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, the purchaser shall assure that the price information is current and that the Government obtains the benefit of maximum discounts.

**§ 1-3.603-2 Data to support small purchases.**

(a) The manner of securing quotations, and the nature and extent of information to be required for small purchases, are for determination by the procuring agency, but should be limited to only that deemed necessary to conclude purchase action.

(b) The following are illustrative of the extent to which quotation information should be recorded:

(1) *Oral solicitations.* When oral price quotations are obtained, informal records should be established which will reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the purchase action request form of the agency, or whatever medium the purchaser is using as his basis for making the purchase, are satisfactory for this purpose.

(2) *Written solicitations.* Retention in the purchase files of written quotations received, or references to printed price lists used, will usually suffice as the record supporting the price paid.

(c) Purchase data collected or compiled during the course of arranging the purchase are for administrative and guidance value in making the purchase and issuing the appropriate purchase document. The retention of such data in the purchase files for use in subsequent reference, or as administratively required by agencies for management review, should be limited in time and quantity to the minimum necessary for such use.

**§ 1-3.604 Imprest funds (petty cash) method.**

The use of imprest funds in connection with small purchases is governed by the Joint Regulation for Small Purchases Utilizing Imprest Funds issued jointly by the General Services Administration, Department of the Treasury, and the General Accounting Office. (17 F.R. 2236; 22 F.R. 5726.)

**§ 1-3.605 Order-Invoice-Voucher.**

**§ 1-3.605-1 Standard Form 44.**

(a) *Prescribed form.* Standard Form 44 (Purchase Order-Invoice-Voucher) shall be used by Federal agencies in connection with the procurement of and payment for purchases of supplies and nonpersonal services, whenever:

(1) The amount of the purchase is not in excess of \$2,500;

(2) A single payment is contemplated;

(3) Its use is determined by the agency to be more efficient or economical in making purchases, such as when its use will minimize paper work and administrative expense and act as an incentive, to the mutual advantage of business and the Government, for sellers to do business with the Government by simplifying purchasing procedure and expediting payment; and

(4) No more than the copies provided are essential to administrative distribution needs.

(b) *Instructions for use.* General procedural instructions governing the use of Standard Form 44, are printed on the forms and the inside cover of the book.

(c) *Agency implementation.*

(1) Each Federal agency having need for this type purchase order form should issue instructions providing for:

(i) Use of Standard Form 44, for small purchases made under the criteria set forth in section 1-3.605-1(a).

(ii) Accountability and safeguarding of the forms.

(iii) Controlling and accounting for purchases made.

(2) Agency instructions shall be consistent with the provisions on Standard Form 44, and of this section. Agency procurement and accounting procedures should provide insofar as practicable for unrestricted use of the form under the criteria provided.

(d) *Availability of form.*

(1) Standard Form 44 is available from General Services Administration stores in books of twenty-five carbon interleaved sets. These books may be ordered in the same manner as other standard forms.

(2) Standard Form 44 may be ordered overprinted with agency name, address, and serial number; and with special weight paper, length of carbons, type of construction, and number of sets per book as specified by the ordering agency. The format of the form, the number of copies per set, and the color of the paper will not be changed. The instructions which appear on the inside front cover may be altered to suit the ordering agency's specific requirements.

**§ 1-3.605-2 Standard Forms 147 and 148.**

(a) *Prescribed forms.*

(1) Standard Form 147 (Order-Invoice-Voucher) and Standard Form 148 (Order-Invoice-Voucher, Continuation Sheet) provide in one set of forms a purchase or delivery order, vendor's invoice, receiving report, and public voucher, with requisite space for purchase data, vendor's invoicing, and allied budget, accounting, and voucher payment data. These forms are designated primarily for use when single delivery, single payment transactions are contemplated at the time of issuance, and are for use by all Federal agencies when in the judgment of the agency the use of a combined order-invoice, receiving report, and voucher will simplify the procurement process.

(2) Primary uses of Standard Form 147 are:

(i) As a purchase order for small purchases.

(ii) As a delivery order for ordering or scheduling delivery against an established contract.

(3) The use of Standard Form 147 as a delivery order against a blanket purchase order is in keeping with its intended use.

(b) *Expanded use of the form.*

(1) The use of Standard Form 147 may be expanded to include purchase actions other than those generally contemplated for this type of form, if it is determined by an agency as the result of a study of its procurement operations that such expanded use would result in standardization or simplification of procedures or of minimizing paper work and administrative expense. Such expanded use may be authorized by the head of the agency.

(2) The use of additional parts, creating more than six-part (or in some cases seven-part) sets, must be authorized in writing by the head of the department or independent agency, and be based on a complete study of operations which fully justifies the necessity for each additional part. These findings and determinations must be on file in the agency and available to representatives of the General Services Administration and the General Accounting Office.

(c) *Availability of form.*

(1) Standard Form 147 is available in six-part sets from General Services Administration regional offices for the convenience of agencies not requiring overprinting, and may be ordered in the same manner as other standard forms.

(2) Standard Forms 147 and 148 may be ordered overprinted with agency name, address, and serial number; and with special weight paper, length of carbons, or other items as specified by the ordering agency. The format of the form, the color of the paper, and the number of copies (except when authorized pursuant to section 1-3.605-2 (b)(2)) shall not be changed.

(d) *Special instructions.*

(1) Each agency is expected to develop and issue internal administrative instructions regarding the use of the forms consistent with the provisions of this section.

(2) The use of the forms contemplates that the vendor will utilize copy 1 (original) as his invoice in billing the Government. However, in furtherance of the policy of encouraging vendors to make consolidated periodic billings in instances where several orders have been placed with the same dealer in the same billing period, agencies are requested to instruct vendors to make consolidated periodic billings on their own invoices or statement forms supported by originals of the Standard Forms.

(3) When procurement documented on the forms is paid for in cash, copy 1 of Standard Form 147 should be marked paid and signed and dated by the vendor or agent on the face thereof in the usual commercial manner. The vendor's certificate need not be signed when the form is received for cash payment. Cash register receipts or other commercial receipts may be attached in lieu of signature by the vendor.

**(e) Terms and conditions.**

(1) Additional terms and conditions not inconsistent with those on the form may be added in the space provided, or otherwise.

(2) Additional terms and conditions inconsistent with those on the form may not be used unless authorized by the head of the using agency or the officer designated by him for this purpose. A copy of each such approval for use of inconsistent terms and conditions shall be forwarded to the Administrator of General Services.

**§ 1-3.606 Blanket purchase arrangements.****§ 1-3.606-1 General.**

This section establishes policy relating to the purchase of day-to-day requirements through arrangements with vendors or dealers to furnish such supplies or nonpersonal services as the Government may purchase from such sources during a stated period of time. Generally, these arrangements should be made only with local sources so that individual purchases thereunder can be effected with a minimum of time and paper work. In addition to making blanket purchase arrangements for small purchases, similar blanket purchase accounts may be established with Federal Supply Schedule contractors, if not inconsistent or at variance with the terms of the applicable Federal Supply Schedule Contract.

**§ 1-3.606-2 Authority to use blanket purchase arrangements.**

(a) Blanket purchase arrangements are authorized when:

(1) A wide variety of items in a broad class of goods, like hardware, are generally purchased from local suppliers but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide local commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case where the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) Blanket purchase arrangements should be made with local firms from whom numerous individual purchases will likely be made in a given period. For example, where past experience has shown that certain commercial firms selling supplies in a local area are dependable and consistently lower in price than other supply firms in the area dealing in the same commodities, and numerous small purchases are usually made from such suppliers, it would be advantageous to establish blanket purchase arrangements with these firms.

(c) There is no prohibition against making these arrangements with several suppliers for the same class or classes of items. Where experience indicates that prices vary between suppliers, it is preferable to have several blanket purchase arrangements so that delivery orders can be placed with the firm offering the best price.

**§ 1-3.606-3 Establishment of account.**

If it is determined that blanket purchase arrangements with certain suppliers would be advantageous, such suppliers should be contacted, preferably in person or through correspondence, in order to make the necessary arrangements with respect to securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

**§ 1-3.606-4 Documentation.**

(a) Any documentation is permissible that assures the following:

(1) That the vendor and purchaser are in agreement as to what is being purchased.

(2) That at the time of delivery a record of sale and receipt is created.

(3) That at the time of billing for payment the foregoing requirements have provided evidence of the items, quantity, price, date sold and other relevant data.

(b) The issuance of a formal purchase order to document blanket purchase arrangements may be necessary only in certain instances. Such instances may be: when required by the vendor for administrative or tax exemption purposes; when administratively deemed necessary in the best interests of the Government by an agency; or when it is necessary to fix the extent of items covered, quantity, prices, expenditure authorized, activities participating, or otherwise identify or isolate areas of the arrangement. The issuance of a purchase order for Government purchasing or accounting reasons alone is not necessary.

(1) Purchase orders establishing blanket purchase arrangements, when required, may be general and broad in language with only sufficient detail to indicate the general nature of supplies or services to be covered, and may or may not, as the need dictates, be specific as to quantity, quality, specifications, or time limitation. The blanket purchase orders may be issued on any authorized purchase order form. Individual blanket purchase orders terminate when the purchases thereunder total the dollar amount limitation or the stated time period expires.

(2) In any contemplated amendment of a blanket purchase order, due consideration should be given to possible changes in market conditions, sources of supply, etc., which may warrant placing a new order with the same or a different source in preference to amendment.

**§ 1-3.606-5 Agency implementation.**

The following general instructions are set forth for agency use in the issuance of administrative regulations implementing this policy:

(a) The vendor-agency relationship is that of an open account limited only by the maximum amount and time period limitations fixed by that agency.

(b) The vendor-agency arrangement may be limited to furnishing individual items, or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(c) The requirements of one or more activities, offices, or projects in a geographical area may be secured by this means.

(d) Authority and responsibility for effecting blanket purchase arrangements should be delegated by agencies to the lowest agency level to which the responsibility of providing supplies for its own operations or to other offices, installations, projects, or functions is placed or assigned. Such levels may be organized supply points, separate independent or detached field parties or one-man posts or activities.

(e) The use of blanket purchase arrangements does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be accomplished by the use of simplified methods avoiding detailed fiscal recordation for individual deliveries and similar transactions under arrangements referred to above.

(f) The use of a blanket purchase arrangement does not authorize purchases not otherwise authorized by laws or regulations applicable; e.g., the blanket purchase arrangement, being a method of simplifying the making of individual small purchases, may not be used to avoid the \$2,500 limitation.

(g) The blanket purchase arrangement and individual purchases thereunder are primarily designed to reduce the amount of documentation in connection with small purchases. The same policies as to selection of suppliers on the basis of price, time discounts, quality of merchandise, and responsibility of suppliers pertain to blanket purchase arrangements and purchases thereunder as to purchases made by other approved methods. Individual purchases should be made only after making price comparisons with other sources available to the extent practicable, consistent with the purchase involved.

(h) Constant consideration should be given to possible changes in market conditions, sources of supply, and other pertinent factors which may warrant making new arrangements with different dealers or vendors, or modifying existing arrangements.

**§ 1-3.607 Interagency use of local term contracts.**

(a) *General.* This section provides for the cooperative use by the field office of one executive agency of the local term contracts of another agency, or another office of the same agency, under the circumstances outlined, and establishes criteria for local contracting by an agency for the combined needs of several agency offices in the area. These contracts provide a means of meeting the local requirements of supplies and services not available from normal agency internal supply channels or other prescribed sources of supply. All Federal agencies are urged to participate in this program.

(b) *General conditions warranting use.* The use of term contracts usually will be found expedient and economical under any or all of the following conditions:

(1) When the day-to-day requirements for the supply or service are continuing or recurring.

(2) When the probable total requirements only are known and it is expedient and economical to have a source of supply and price determined in advance of the individual instances of actual need.

(3) When this method best meets the needs for providing ordering offices with ready sources of supply.

(c) *Use of existing contracts.* To the extent practicable, when approved by the contracting office and the contract permits or may be amended to permit the use of an existing local term contract of another office of the same agency or of another agency in lieu of entering into a separate contract, such use should be considered under any of the following circumstances:

(1) When such use will obviate the administrative expense and time delay incident to making a separate contract.

(2) When there is a price advantage to be gained, freight and other costs considered.

(3) When the requiring office has local purchasing authority but is not staffed or authorized to execute contracts.

(d) *Multiple use contracts.* In furtherance of the economical and other advantages to be gained from cross utilization of local term contracts, wherever possible the requirements of several offices in the same community should be combined and included in a single contract:

(1) When there is a local repetitive need for a particular article or service by the individual agencies;

(2) When an advantage accrues to requiring offices or activities through establishment of such contracts; and

(3) When it is expedient and practical for a single office to perform the contracting function for other offices, delivery or performance under the contract being arranged for by the participating offices as required.

(e) *Selection of contracting agency.* The following criteria usually will determine which of the agency offices in any given area having a common need for a given article or service should assume the responsibility for contracting for the requirements of the group in addition to its own needs:

(1) Current or potential preponderant use of consumption.

(2) Actual or potential qualifications and experience of contracting personnel, with due regard to adequacy of staff.

(3) Physical location of the contracting office in relation to market area serving the agencies.

(4) Consideration of the bid prices consistently received for a given article or service by individual contracting offices.

(f) *Responsibilities of contracting office and participating offices.* The responsibilities of the contracting agency and of the other participating offices with respect to common local term con-

tracts, except where other arrangements have been made, normally will be:

(1) *Contracting office.*

(i) Arranging with participating offices for submission of estimated requirements.

(ii) Soliciting and analyzing bids and awarding and executing contracts.

(iii) Exercising general contract administration, except followup and expediting.

(iv) Making available to the participating office such contract data as is required for placing orders, payment of invoices, etc.

(2) *Other participating offices.*

(i) Placing of orders directly with contractor.

(ii) Arranging for inspection and acceptance.

(iii) Arranging for billing and paying the contractor.

**Subpart 1-3.7—[Reserved]**

**Subpart 1-3.8—Price Negotiation Policies and Techniques**

**§ 1-3.800 Scope of subpart.**

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to approval or review within an agency. The principles in this subpart apply to negotiation of prices on all types of contracts and to revised prices as well as initial prices.

**§ 1-3.801 Basic policy.**

(a) *General.* It is the policy of the Government to procure property and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

(b) *Responsibility of contracting officers.*

(1) Contracting officers, acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of their respective agencies to enter into and administer contracts on behalf of the Government in accordance with agency procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all of the organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, engineering, traffic management, and cost analysis) necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Government.

(2) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills as much as possible. The contracting

officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus, the final negotiation of price, including evaluation of cost estimates, remains the responsibility of the contracting officer.

(c) *Responsibility of other personnel.* Personnel, other than the contracting officer, who determine quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable as well as have a material effect upon the prices. Failure to finalize requirements in sufficient time to allow:

(1) A reasonable period for preparation of requests for proposals;

(2) Preparation of quotations by offerors;

(3) Contract negotiation and preparation; and

(4) Adequate manufacturing lead time;

causes delinquency in delivery and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specifications, adequacy of sources of supply, and like matters have responsibility in such areas, equal to that of the contracting officer, for timely, sound, and economical procurement.

**§ 1-3.802 Preparation for negotiation.**

(a) *Product or service.* Knowledge of the product or service, and its use, is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(b) *Selection of prospective sources.* Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be invited from a sufficient number of competent potential sources to insure adequate competition.

(c) *Requests for proposals.* Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a quotation properly. The request for proposals shall be as complete as possible with respect to: item description or statement of work; speci-

fications; Government-furnished property, if any; required delivery schedule; and contract clauses. If a price breakdown is required, the request for proposals shall so state. Requests for proposals shall specify a date for submission of proposals; any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be released to all prospective offerors at the same time and no offeror shall be given the advantage of advance knowledge that proposals are to be requested. Generally, requests for proposals shall be in writing. However, in appropriate cases, such as the procurement of perishable subsistence, oral requests for quotations are authorized.

#### § 1-3.803 Type of contract.

(a) The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. Section 1-3.402 lists some of the factors for this joint consideration. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for a selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of cost-reimbursement type or time and materials contracts is to be avoided where experience has provided a basis for firmer pricing which will promote efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

#### § 1-3.804 Conduct of negotiations.

Evaluation of offerors' or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously. Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid. Basic questions should not be left for later agreement during price revision or other supplemental proceedings. Cost and profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

#### § 1-3.805 Selection of offerors for negotiation and award.

(a) The normal procedure in negotiated procurements, after receipt of initial

proposals, is to conduct such written or oral discussions as may be required to obtain agreements most advantageous to the Government. Negotiations shall be conducted as follows:

(1) Where a responsible offeror submits a responsive proposal which, in the contracting officer's opinion, is clearly and substantially more advantageous to the Government than any other proposal, negotiations may be conducted with that offeror only; or

(2) Where several responsible offerors submit offers which are grouped so that a moderate change in either the price or the technical proposal would make any one of the group the most advantageous offer to the Government, further negotiations should be conducted with all offerors in that group.

Whenever negotiations are conducted with more than one offeror, no indication shall be made to any offeror of a price which must be met to obtain further consideration, since such practice constitutes an auction technique which must be avoided. No information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Whenever negotiations are being conducted with several offerors, while such negotiations may be conducted successively, all offerors participating in such negotiations shall be offered an equitable opportunity to submit such pricing, technical, or other revisions in their proposals as may result from the negotiations. All offerors shall be informed that after the submission of final revisions, no information will be furnished to any offeror until award has been made.

(b) There are certain circumstances where formal advertising is not possible and negotiation is necessary. In the conduct of such negotiations, where a substantial number of clearly competitive proposals has been obtained and where the contracting officer is satisfied that the most favorable proposal is fair and reasonably priced, award may be made on the basis of the initial proposals without oral or written discussion; provided, that the request for proposals notifies all offerors of the possibility that award may be made without discussion of proposals received and, hence, that proposals should be submitted initially on the most favorable terms, from a price and technical standpoint, which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposal, the contracting officer shall not make an award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Government involves a material departure from the stated requirements, consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal; provided, that this can be done without revealing to the other firms any information which is entitled to protection.

(c) A request for proposals may provide that after receipt of initial technical proposals, such proposals will be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable, and upon submission of prices thereafter, award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(d) The procedures set forth in paragraphs (a), (b), and (c) of this section 1-3.805 may not be applicable in appropriate cases when procuring research and development, or special services (such as architect-engineer services) or when cost-reimbursement type contracting is anticipated.

(e) Whenever in the course of negotiation a substantial change is made in the Government's requirements, for example, increases or decreases in quantities or material changes in the delivery schedules, all offerors shall be given an equitable opportunity to submit revised proposals under the revised requirements.

#### § 1-3.806 Pricing individual contracts.

(a) Each contract shall be priced separately and independently, and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition shall not be construed to prohibit forward pricing agreements applicable to several contracts.

(b) Contracting officers shall not rely on profit limiting statutes as remedies for ineffective pricing. Such statutes generally provide for the recapture of excessive profits, but they do not recapture the costs of inefficiency and waste which may result from failure to negotiate reasonable prices initially.

#### § 1-3.807 Cost, profit, and price relationships.

(a) When products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fixed fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in section 1-3.805(a). The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors.

(b) Profit is only one element of the price proposal and normally represents a smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profits that the most important consideration, the total price itself, is distorted, or diminished in its significance. Government procurement is primarily concerned with the reasonableness of a negotiated price and only

secondarily with the eventual cost and profit.

(c) Particularly where effective competition is lacking the estimate for profit or the proposed fixed fee should be analyzed in the same manner as all other elements of price, applying tests and considerations discussed in section 1-3.808-4. A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. If, for example, a factor of 10% were used as a flat percentage rate for estimating profit in a situation where two sources were needed to meet the requirement, the result might be grossly inequitable. If one supplier proposes to and produces at a unit cost of \$1,000 and the second at a unit cost of \$1,500, with a flat 10% factor applied to both transactions as estimated profit, the second and higher cost supplier would receive \$150 profit while the lower cost supplier would receive only \$100.

### § 1-3.808 Pricing techniques.

#### § 1-3.808-1 General.

Policies set forth in this section 1-3.808 may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. The extent to which any particular method, or combination of methods, should be used will depend upon the judgment of the contracting officer. The following sections describe several of the principal price negotiation techniques and the circumstances under which each may be used. These considerations are equally applicable to initial and subsequent price negotiations.

#### § 1-3.808-2 Price analysis.

(a) Some form of price analysis should be made in every procurement, even when competitive proposals have been submitted. The presence of effective competition, however, may make it possible to limit considerably the degree of price analysis required.

(b) One form of price analysis is the comparison of prior quotations and contract prices with current quotations for the same or similar end items. To provide a suitable basis for comparison, appropriate allowances may have to be made for differences in such factors as specifications, quantities ordered, time for delivery, Government-furnished materials, and the general level of business and prices.

(c) Rough yardsticks may often be developed (in such terms as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to additional pricing techniques, including cost analysis. Such yardsticks should be considered as an indispensable adjunct to cost analysis, since a study of a single offeror's estimated costs in sole source situations will not indicate whether the proposed price is fair and reasonable in comparison with other products of the same kind.

#### § 1-3.808-3 Cost analysis.

(a) The need for cost analysis depends on the effectiveness of the methods

of price analysis, the amount of the proposed contract, and the cost and time needed to accumulate the information necessary for analysis. When cost analysis is undertaken, the contracting officer must exercise judgment in determining the extent of the analysis. Cost analysis is desirable whenever:

(1) Effective competition has not been obtained;

(2) A valid basis for price comparison has not been established, because of the lack of definite specifications, the novelty of the product, or for other reasons;

(3) Price comparisons have revealed apparent inconsistencies which cannot be satisfactorily explained or otherwise reasonably accounted for;

(4) The prices quoted appear to be excessive on the basis of information available;

(5) The proposed contract is of a significant amount and is to be awarded to a sole source;

(6) The proposed contract will probably represent a substantial percentage of the contractor's total volume of business; or

(7) A cost-reimbursement, incentive, price redeterminable, or time and material contract is negotiated.

(b) Cost analysis involves the evaluation of specific elements of cost and the effect on prices of such factors as:

(1) Allowances for contingencies;

(2) The necessity for certain costs;

(3) The reasonableness of amounts estimated for the necessary costs;

(4) The basis for allocation of overhead costs; and

(5) The appropriateness of allocations of particular overhead costs to the proposed contract.

(c) Among the several types of cost comparisons that should be made where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

(1) Actual costs previously incurred by the contractor or offeror; and with its last prior estimate for the same or similar item or with a series of prior estimates;

(2) Current estimates from other possible sources; and

(3) Prior estimates or historical costs of other contractors manufacturing the same or related items.

(d) Forecasting future trends in costs from historical cost experience is of primary importance in pricing. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends. Even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken in cases involving production of recently developed, complex equipment. In some cases, probable increases in labor efficiency, and reductions in material spoilage as a contractor's work force gains in experience with such new products can be predicted statistically. Efficiency curves may be devised to predict the reduction in the spoilage rate; learning curves may be devised to evaluate reductions in labor hours. Effective use of learning curves depends

on the presence of the following elements:

(1) Direct labor should represent a substantial element of the total price;

(2) The contract price should be large enough to warrant the time spent in collecting the statistical data necessary to construct valid curves;

(3) The proposed contract should cover production over a relatively long period;

(4) A substantial body of historical labor cost data must be available; and

(5) The product must be a complex, non-standard item requiring a substantial amount of assembly labor (where relatively large amounts of automatic machinery are to be employed, or the product is a relatively standard item, learning curves may be of little value).

### § 1-3.808-4 Profit.

(a) *General.* Where competition is adequate and effective and proposals are on a firm fixed-price basis, the contracting officer normally need not consider in detail the amount of estimated profit included in a price. However, when detailed analysis of profit is appropriate due to lack of competition or for some other reason, the factors discussed in the following paragraphs should be considered.

(b) *Degree of risk.* The degree of risk assumed by the contractor should influence the amount of profit a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through unusual contingency provisions, or other risk-reducing measures, the amount of profit to which the contractor is reasonably entitled is less than where the contractor assumes all risk.

(c) *Extent of Government assistance.* The Government encourages its contractors to perform their contracts with the minimum of financial, facility, or other assistance from the Government. Where extraordinary financial, facility, or other assistance must be furnished to a contractor by the Government, such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit.

(d) *Performance record of contractor.* The contractor's past and present performance, and cooperation in such areas as engineering (including inventive, design simplification, and developmental contributions) and quality control should, in appropriate measure, affect the amount of profit.

(e) *Character of contractor's business.* Recognition must be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the rate of capital turnover, and the effect of such individual procurement upon such business. For example, where a contractor is engaged in an industry where the turnover of working capital is low, generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid.

(f) *Contractor's performance.* In addition to the factors set forth in section 1-3.102, the contractor's performance

should be evaluated in such areas as quality of product, quality control, scrap and spoilage, efficiency in cost control (including need for and reasonableness of costs incurred), meeting delivery schedule, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), management of subcontract programs, and any unusual services furnished by the contractor. To encourage and maintain a high degree of contractor efficiency and economy, the negotiator must recognize that good performance deserves a greater opportunity for profit than poor performance.

#### § 1-3.803-5 Subcontracting.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large portion of the procurement dollar is spent by prime contractors in subcontracting for work, raw materials, parts, and components, efficient purchasing practices by a contractor will contribute heavily toward efficient and economical production.

(b) While basic responsibility rests with the prime contractor for decisions to "make or buy," for selection of subcontractors, and for subcontract prices and subcontract performance, the contracting officer must have adequate knowledge of those elements and their effects on prime contract prices. Consequently, during price negotiations, when circumstances warrant such action, the contracting officer may require the offeror or contractor to furnish adequate information, for use in evaluating the proposed price, with respect to:

(1) The purchasing practices of the prime contractor;

(2) The principal components to be subcontracted and the contemplated subcontractors, including the degree of competition obtained, cost or price analyses or price comparisons accomplished, and the extent of subcontract supervision;

(3) The types of subcontracts, i.e., firm fixed-price or other; and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

The evaluation of total subcontracting should not be reduced to applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. Such elements as economies achieved through "make or buy" decisions, and the necessity of closer supervision of subcontractors performing complex work (through the furnishing of engineering or other technical assistance), should be fully considered.

(c) When the prime contract is to be placed on a firm fixed-price basis, there is no need, for pricing purposes, to provide for review or approval by the contracting officer of subcontracts prior to their placement.

(d) When the prime contract is not to be placed on a firm fixed-price basis, review of subcontracts prior to placement may be desirable since the ultimate cost to the Government will depend in part on subcontract prices and performance. Prime contract provisions requiring ad-

vance notification, review, or approval of subcontracts shall be consistent with the type of contract and the conditions applicable to its use as described in Subpart 1-3.4. For example, if the contract is on a firm fixed-price basis except for a clause permitting price escalation resulting from cost increases for certain materials, the prime contract may limit the contracting officer's right of review to subcontracts for materials covered by the escalation clause. In the case of cost-reimbursement type contracts, advance notification, prior consent, or approval of subcontracts should be required. Contract provisions requiring advance notification to the contracting officer of proposed subcontracts for materials, components, and other purchases may be appropriate both for information as to sources and prices and to provide an opportunity for review and for approval or objection by the contracting officer prior to award of the subcontracts. Such provisions are particularly necessary when:

(1) The prime contractor's purchasing policy and system or performance thereunder are considered inadequate;

(2) Subcontracts are for items for which there is no cost information or for which the proposed prices appear unreasonable, and the amounts involved are substantial;

(3) Close working arrangements or other business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than would otherwise be obtained;

(4) A subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or

(5) A subcontract is to be placed on a fixed-price incentive, time and material, or cost-reimbursement basis.

The contract provisions relating to subcontracts should be consistent with the amount and character of subcontract work and with the overall character of the prime contract, involving the Government to the minimum extent practicable in the contractor's exercise of management responsibility, but giving reasonable assurance that the Government is receiving the greatest practical return for its expenditure. Provisions in prime fixed-price contracts relating to subcontract review may, as appropriate, be confined to one major subcontract or to certain classes of subcontracts; may set a floor above which advance approval of proposed subcontracts may be required before placement; or may be tailored to cover unusual or particular circumstances. In those instances where a contractor's purchasing system has been deemed adequate, review of subcontracts generally may not be necessary. However, contracting officers shall conduct periodic reviews of the application of the system to insure conformance therewith. In instances where subcontracts have been placed on a cost-reimbursement or time and mate-

rials basis, contracting officers should be skeptical of approving the repetitive or unduly protracted use of such types of subcontracts and should follow the principles of section 1-3.803(b).

(e) In cases where the prime contract reserves a right for the contracting officer to review or approve subcontracts, the prime contract shall also reserve to the Government the right to inspect and audit the books and records of such subcontractors. Whenever such first tier subcontracts are of the cost-reimbursement, fixed-price incentive, or time and material type, a similar right shall be reserved to the Government to inspect and audit the books and records of lower tier subcontractors: *Provided*, That such a right shall not be reserved contractually below the point where a firm fixed-price subcontract intervenes.

(f) Where subcontracts are placed on a fixed-price incentive basis, it is particularly important in negotiating revisions of prime contract prices that there be substantial assurance that there was initial close pricing of subcontracts.

#### § 1-3.803-6 Sole source items.

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers, use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally consummated with the contractor, the contractor's price lists and discount or rebate arrangements should be examined and negotiations conducted on the basis of the "best user," "most favored customer," or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual procurement being negotiated.

#### § 1-3.809 Audit as a pricing aid.

(a) *General.* The audit services of the agencies should be utilized as a pricing aid by the contracting officer to the fullest extent appropriate when the dollar amount involved is sufficiently large, or special circumstances exist which warrant the time and expense required for the particular type of advisory audit, special survey, or audit analysis of price or cost desired. Judicious use of audit services will expedite proper pricing. The determination as to the necessity of an audit report for pricing purposes is the responsibility of the contracting officer. When requesting audit services, the contracting officer shall state the purpose for which the report is to be used and define any specific areas of audit examination which should be given special attention.

(b) *Application.* Except for contracts containing retroactive price revision clauses, pricing techniques are concerned mainly with estimates of future costs. Therefore, audit reports for either retroactive or prospective pricing should not only establish costs accrued to a specific cut-off point for price proposal purposes but also should include cost trends and other available information which would be of assistance to the contracting officer

in price negotiation. Such audit reports will serve a useful purpose in:

(1) The evaluation of contingency allowances, overhead allocations, purchasing management efficiency, and similar cost elements;

(2) Both the initial and subsequent pricing of contracts containing price revision clauses; and

(3) Establishing limitations on costs and price revision adjustments.

(c) *Conditions for use.* Close coordination between the audit agency and procurement personnel will assist in determining the necessity of audit of price or cost proposals or the necessity of special surveys relating to contractor's accounting or purchasing systems. Some of the conditions under which the contracting officer should consider the use of audit services include:

(1) Inadequate knowledge concerning the contractor's accounting policies, cost systems, or substantially changed methods or levels of operation.

(2) Previous unfavorable experience indicating doubtful reliability of the contractor's estimating, accounting, or purchasing methods.

(3) Procurement of a new product for which cost experience is lacking.

(4) Contract performance requiring a substantial period of time.

## PART 1-7—CONTRACT CLAUSES

1-7.000 Scope of part.

### Subpart 1-7.1—Fixed-Price Supply Contracts

- 1-7.100 Scope of subpart.
- 1-7.101 Clauses.
- 1-7.101-1 Definitions.
- 1-7.101-2 Changes.
- 1-7.101-3 Extras.
- 1-7.101-4 Variation in quantity.
- 1-7.101-5 Inspection.
- 1-7.101-6 Responsibility for supplies.
- 1-7.101-7 Payments.
- 1-7.101-8 Assignment of claims.
- 1-7.101-9 Additional bond security.
- 1-7.101-10 Examination of records.
- 1-7.101-11 Default.
- 1-7.101-12 Disputes.
- 1-7.101-13 Notice and assistance regarding patent infringement.
- 1-7.101-14 Buy American Act.
- 1-7.101-15 Convict labor.
- 1-7.101-16 Eight-hour law of 1912—overtime compensation.
- 1-7.101-17 Walsh-Healey Public Contracts Act.
- 1-7.101-18 Nondiscrimination in employment.
- 1-7.101-19 Officials not to benefit.
- 1-7.101-20 Covenant against contingent fees.
- 1-7.101-21 Utilization of small business concerns.
- 1-7.101-22 Federal, State, and local taxes.
- 1-7.101-23 Liquidated damages.

§ 1-7.000 Scope of part.

This part sets forth contract clauses for use in connection with the procurement of personal property and nonpersonal services (including construction).

### Subpart 1-7.1—Fixed-Price Supply Contracts

§ 1-7.100 Scope of subpart.

This subpart sets forth contract clauses for use in fixed-price supply contracts.

§ 1-7.101 Clauses.

Except as otherwise provided in this section 1-7.101, the clauses set forth in this section shall be used in fixed-price supply contracts entered into by formal advertising and, unless inappropriate, should be used in negotiated contracts (other than for small purchases as defined in Subpart 1-3.6).

§ 1-7.101-1 Definitions.

#### DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

§ 1-7.101-2 Changes.

#### CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 1-7.101-3 Extras.

#### EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

§ 1-7.101-4 Variation in quantity.

#### VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

§ 1-7.101-5 Inspection.

#### INSPECTION

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed, or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: Provided, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract require-

ments nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

#### § 1-7.101-6 Responsibility for supplies.

##### RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### § 1-7.101-7 Payments.

##### PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract.

#### § 7.101-8 Assignment of claims.

##### ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S. Code 203, 41 U.S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent

provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: Provided, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

The last sentence of paragraph (a) of the above clause shall be included only in contracts entered into by the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President pursuant to clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.

#### § 1-7.101-9 Additional bond security.

##### ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

#### § 1-7.101-10 Examination of records.

##### EXAMINATION OF RECORDS

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchases orders for public utility services at rates established for uniform applicability to the general public.

The above clause shall be included in negotiated contracts exceeding \$2,500 but need not be included in contracts entered into by means of formal advertising.

#### § 1-7.101-11 Default.

##### DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or

so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (Except

as otherwise provided in this contract, this paragraph (e) applies only if this contract contains such clause.)

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### § 1-7.101-12 Disputes.

##### DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### § 1-7.101-13 Notice and assistance regarding patent infringement.

##### NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or service performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

The above clause shall be included only if the amount of the contract exceeds \$5,000.

#### § 1-7.101-14 Buy American Act

##### BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(1) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the costs of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

#### § 1-7.101-15 Convict labor.

Insert the clause set forth in section 1-12.203 under the conditions contained in section 1-12.202.

#### § 1-7.101-16 Eight-hour law of 1912—overtime compensation.

Insert the clause set forth in section 1-12.303 under the conditions contained in section 1-12.302.

#### § 1-7.101-17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in section 1-12.604 under the conditions contained in section 1-12.602.

#### § 1-7.101-18 Nondiscrimination in employment.

##### NONDISCRIMINATION IN EMPLOYMENT

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

#### § 1-7.101-19 Officials not to benefit.

##### OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this

provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### § 1-7.101-20 Covenant against contingent fees.

Insert the clause set forth in section 1-1.503 under the conditions contained in section 1-1.501.

#### § 1-7.101-21 Utilization of small business concerns.

##### UTILIZATION OF SMALL BUSINESS CONCERNS

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

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

#### § 1-7.101-22 Federal, State, and local taxes.

Insert the clause set forth in section 1-11.401-1 under the conditions contained therein.

#### § 1-7.101-23 Liquidated damages.

Insert the provision set forth in section 1-1.315-3 under the conditions and in the manner prescribed in section 1-1.315.

### PART 1-11—FEDERAL, STATE, AND LOCAL TAXES

#### Sec.

1-11.000 Scope of part.

##### Subpart 1-11.1—Federal Excise Taxes

1-11.100 Scope of subpart.  
 1-11.101 Retailers' excise taxes.  
 1-11.101-1 Jewelry and related items.  
 1-11.101-2 Furs.  
 1-11.101-3 Toilet preparations.  
 1-11.101-4 Luggage and handbags.  
 1-11.101-5 Special fuels.  
 1-11.102 Manufacturers' excise taxes.  
 1-11.102-1 Motor vehicles.  
 1-11.102-2 Tires and tubes.  
 1-11.102-3 Gasoline.  
 1-11.102-4 Lubricating oils.  
 1-11.102-5 Refrigeration equipment.  
 1-11.102-6 Electric, gas, and oil appliances.  
 1-11.102-7 Electric light bulbs.  
 1-11.102-8 Radio and television receiving sets, phonographs and records, and musical instruments.  
 1-11.102-9 Sporting goods.  
 1-11.102-10 Photographic equipment.  
 1-11.102-11 Firearms, shells, and cartridges.  
 1-11.102-12 Business machines.  
 1-11.102-13 Pens, mechanical pencils, and lighters.  
 1-11.102-14 Matches.  
 1-11.103 Excise taxes on facilities and services.  
 1-11.103-1 Communications.  
 1-11.103-2 Transportation of persons.  
 1-11.104 Use tax on highway motor vehicles.  
 1-11.105 Selective list of supplies and services subject to Federal excise taxes.

##### Subpart 1-11.2—Exemptions from Federal Excise Taxes

1-11.200 Scope of subpart.  
 1-11.201 Supplies for exportation or shipment to a possession or to Puerto Rico.  
 1-11.201-1 Retailers' excise taxes.  
 1-11.201-2 Manufacturers' excise taxes.

Sec.	
1-11.202	Supplies and services for the exclusive use of the United States.
1-11.203	Supplies sold for further manufacture.
1-11.204	Supplies for vessels and airplanes.
1-11.205	Exemptions from other Federal taxes.
1-11.206	Tax exemption forms.

**Subpart 1-11.3—State and Local Taxes**

1-11.301	Applicability.
1-11.302	Tax exemption forms.

**Subpart 1-11.4—Contract Clause**

1-11.401	Fixed-price type contracts.
1-11.401-1	Clause for advertised and certain negotiated contracts.

**§ 1-11.000 Scope of part.**

(a) This part deals with Federal taxes imposed by the Internal Revenue Code upon certain supplies and services procured by executive agencies; exemptions from such Federal taxes; policy for obtaining exemption from State and local taxes; and a contract clause required or authorized for insertion in contracts.

(b) Except as otherwise indicated, references are to the Internal Revenue Code of 1954 (26 U.S.C.). References to the Internal Revenue Code of 1939 are for convenience in disposing of cases to which the Internal Revenue Code of 1954 is not applicable.

**Subpart 1-11.1—Federal Excise Taxes**

**§ 1-11.100 Scope of subpart.**

This subpart deals with Federal excise taxes (retailers' excises, manufacturers' excises, and the excises on facilities and services) imposed by the Internal Revenue Code upon certain supplies and services procured by executive agencies. Each tax is outlined as to (a) its scope and the basis of its applicability, (b) the supplies or services subject to it, and (c) its rate. Section 1-11.105 contains a selective list of the supplies and services subject to these Federal excise taxes, with references to applicable sections of the Internal Revenue Code of 1954, Treasury Regulations, and cross-references to the Internal Revenue Code of 1939. The availability of exemptions from these taxes is covered in Subpart 1-11.2. Attention is directed to the fact that the scope and rates of these taxes, as set forth in this Subpart 1-11.1, are subject to change from time to time by amendment to the Internal Revenue Code and Treasury Regulations.

**§ 1-11.101 Retailers' excise taxes.**

Chapter 31 of the Internal Revenue Code (which supersedes Chs. 9A, 19 and 20, I.R.C. 1939), as implemented by Treasury Regulations 51 and 119, imposes retailers' excise taxes upon various types of supplies, enumerated in sections 1-11.101-1 through 1-11.101-5, sold at retail. The tax is not imposed on sales for resale. The sale of taxable supplies to the Government for use or consumption is a taxable retail sale. In general, the tax attaches at the time title passes from the seller and is based on the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in

which event the tax is measured by the rental payments. The sale (or rental) price:

(a) Excludes the retailers' excise tax itself, whether or not separately stated;

(b) Excludes, if separately stated, any retail sales tax imposed by any State, Territory, or political subdivision thereof, or the District of Columbia, irrespective of whether liability for such tax is imposed on the vendor or vendee;

(c) Includes any charges for packaging or packaging materials; and

(d) Excludes all other service charges such as for transportation, delivery, insurance, and installation.

If after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also shall be adjusted by credit or refund. The retailer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment.

**§ 1-11.101-1 Jewelry and related items.**

A tax of 10 percent of the sale price is imposed upon the following supplies sold at retail: all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitations thereof; articles made of, ornamented, mounted, or fitted with precious metals or imitations thereof; watches, clocks, cases and movements for watches and clocks, which includes all time measuring devices except watches designed especially for use by the blind; gold, gold-plated, silver, or sterling flatware or hollowware and silver-plated hollowware (which excludes silver-plated flatware); opera glasses; lorgnettes; and marine glasses, field glasses, binoculars and similar instruments, except those which, because of their size or weight, are ordinarily mounted on tripods or other bases. The tax does not apply to any articles used for religious purposes; to surgical and dental instruments; to frames or mountings for eyeglasses; to fountain pens, mechanical pencils, or smokers' pipes if the only parts of such articles which consist of precious metals are essential parts not used for ornamentation; or to buttons, insignia, and any other devices prescribed for use with the uniforms of the Armed Forces. If the manufacturers' excise tax has been imposed on a pen, mechanical pencil, or cigarette lighter, which is further processed so as to make it subject to the retailers' excise tax on jewelry, the retailer, in computing the retailers' excise tax due on the sale, is entitled to a credit or refund in the amount of the manufacturers' excise tax paid on the article.

**§ 1-11.101-2 Furs.**

A tax of 10 percent of the sales price is imposed upon the following supplies sold at retail: articles made of fur on the hide or pelt, and articles of which such fur is the component of chief value—that is, its value is more than three times that of the next most valuable component. The tax is not imposed

upon the sale of raw fur. If fur on the hide or pelt is supplied to a dresser or dyer of fur skins or a manufacturer or repairer of fur articles, who produces a taxable article for the use of the supplier of the fur, the transaction is deemed to be a sale at retail and is subject to the tax.

**§ 1-11.101-3 Toilet preparations.**

A tax of 10 percent of a sales price is imposed upon the following supplies sold at retail: perfume, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any other similar substance, article, or preparation by whatsoever name known which are used or applied, or intended to be used or applied for toilet purposes, but not including any article intended to be used or applied only in the care of babies.

**§ 1-11.101-4 Luggage and handbags.**

A tax of 10 percent of the sales price is imposed upon the following supplies (including fittings or accessories sold therewith) sold at retail: trunks; valises, traveling bags; suitcases; satchels; overnight bags; hat boxes for use by travelers; beach and bathing suit bags; brief cases made of leather or imitation leather; salesmen's sample and display cases; purses; handbags; pocketbooks; wallets; billfolds; card, pass, and key cases; toilet cases; and any other cases, bags, and kits, without regard to size, shape, construction, or material, for use in carrying toilet articles or wearing apparel.

**§ 1-11.101-5 Special fuels.**

(a) *Diesel fuel.* A tax at the indicated rates is imposed upon diesel fuel, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see section 1-11.102-3), which is (1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or (2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to (1), as follows:

(i) At 3 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(A) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States, is used on the highway; or

(ii) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(A) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States, is not used on the highway; and

(iii) At an additional 1 cent per gallon, if fuel on which a tax of 2 cents was paid pursuant to (a) (ii), is used as

fuel in a diesel-powered highway vehicle—

(A) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

(b) *Special motor fuels.* A tax at the indicated rates is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under (a) above, or as gasoline under section 4081 of the Internal Revenue Code (see section 1-11.102-3), which is (1) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (2) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (1) as follows:

(i) At 3 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle—

(A) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States, is used on the highway; or

(ii) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or a motor vehicle—

(A) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States, is not used on the highway; and

(iii) At an additional 1 cent per gallon, if a liquid on which a tax of 2 cents was paid pursuant to (b) (ii), is used as fuel in a highway vehicle—

(A) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(B) Which, if owned by the United States is used on the highway.

(c) *Refund or credit to retailer.* A retailer, who has paid a tax on diesel fuel or special motor fuel, is entitled to a refund or credit of the tax paid, if such retailer has not included the tax in the sales price or otherwise collected the tax from the purchaser, has repaid the tax to the purchaser, or has the purchaser's written consent to take the refund or credit, as follows:

(1) A refund or credit of 3 cents or 2 cents per gallon, as appropriate, if a liquid upon which a tax of either 3 cents or 2 cents per gallon has been paid, is not used as fuel in a diesel-powered highway vehicle or to propel a motor vehicle, motorboat, or airplane;

(2) A refund or credit of 1 cent per gallon, if diesel fuel, upon which a tax of 3 cents per gallon has been paid pursuant to (a) (i), is used as a fuel for a diesel-powered highway vehicle—

(i) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; or

(3) A refund of 1 cent per gallon, if special motor fuel, upon which a tax of 3 cents per gallon has been paid pursuant to (b) (1), is used to propel a motorboat or airplane, or motor vehicle—

(i) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway.

These refunds or credits shall be utilized, in accordance with agency procedures, by adjustment of the contract price whenever it is economically advantageous to do so.

(d) *Refund or credit to manufacturer.* If the manufacturers' excise tax on gasoline (see section 1-11.102-3) has been paid on any material used in the production of a special motor fuel taxable under (b) above, the manufacturer of the gasoline is entitled to a refund or credit of such tax, subject to the conditions similar to those stated in the opening lines of (c) above. The contract price for special motor fuels purchased by any agency shall not include an amount for manufacturers' excise tax on gasoline used in the production of such special motor fuel.

#### § 1-11.102 Manufacturers' excise taxes.

Chapter 32 of the Internal Revenue Code (which supersedes Ch. 29, I.R.C. 1939) as implemented by Treasury Regulations 44 and 46, imposes manufacturers' excise taxes upon various types of supplies, enumerated in sections 1-11.102-1 through 1-11.102-14 sold by a manufacturer, producer, or importer. In general, the tax attaches at the time title passes from the manufacturer and is based on the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in which event the tax is measured by the rental payments even though such payments exceed the price or fair value of the supply (with the exception of a special rule which applies to the rental of trailers suitable for use with passenger automobiles, permitted by section 4216 (d), I.R.C.). The sale (or rental) price excludes the tax itself and all service charges connected with the sale, such as transportation, delivery, insurance, or installation charges, except charges for packaging and packaging materials, which are included. If after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also should be adjusted. The manufacturer, in turn, is entitled to a refund or credit from the Internal Revenue

Service for such tax adjustment. Supplies subject to the retailers' excise tax on jewelry (see section 1-11.101-1) are not subject to manufacturers' excise taxes.

#### § 1-11.102-1 Motor vehicles.

(a) A tax at the indicated rates is imposed upon the following supplies (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(1) Chassis and bodies of trucks, buses, truck and bus trailers and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms;

(2) Chassis and bodies of automobiles, and trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent through June 30, 1958, and 7 percent thereafter; and

(3) Parts or accessories—8 percent through June 30, 1958, and 5 percent thereafter. Parts or accessories are defined to include any article—

(i) The primary use of which is to improve, repair, replace, or serve as a component part of a motor vehicle;

(ii) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(iii) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable motor vehicle are treated as parts or accessories whether or not primarily adapted for such use. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manufacture of, or as a component part of, any article, whether or not such article is subject to a manufacturers' excise tax. If, after August 31, 1955, a manufacturer uses a tax-paid part or accessory as material in the manufacture of, or as a component part of, any article, such manufacturer is entitled to a credit or refund of the tax paid on the part or accessory. The contract price of supplies purchased by any agency shall not include an amount for the manufacturers' excise tax on automotive parts or accessories purchased for use, or after August 31, 1955 used, in the manufacture of any article.

(b) The tax on automotive parts or accessories does not apply to tires, inner tubes, and automobile radio and television receivers. If a manufacturer of motor vehicles sells these articles in connection with the sale of a taxable motor vehicle, he may take a credit against the motor vehicle tax in the amount of the motor vehicle tax rate applied to his purchase price of the tires, inner tubes, and automobile radio and television receivers.

ers. The contract price for supplies purchased by any agency shall not include an amount for the manufacturers' excise tax on motor vehicles and automotive parts or accessories to the extent that these credits are available to the manufacturer.

#### § 1-11.102-2 Tires and tubes.

(a) A tax at the indicated rates is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—8 cents per pound;

(2) Other tires, which include pneumatic and solid tires, casings, hoops, strips, and bands of all kinds which are designed to fit the wheel of any type of vehicle, that is capable of transporting a person or burden—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—9 cents per pound on total weight, including air valves and stems; and

(4) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—3 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax, provided that the credit under paragraph (b) of this section 1-11.102-2 is not available. The contract price for supplies purchased by any agency will not include an amount for the manufacturers' excise tax on tread rubber to the extent that this exemption or refund or credit is available to the manufacturer.

In determining weights of taxable tires under (1) and (2), metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under (1) and (2) does not apply to tires which are more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires are of all-rubber construction with fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see section 1-11.203). However, if tax-paid tires and tubes are sold in connection with the sale by a manufacturer of a taxable motor vehicle, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers' purchase price on the tires and tubes (see section 1-11.102-1(b)).

#### § 1-11.102-3 Gasoline.

(a) A tax of 3 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known as gasoline, including casing-head and natural gasoline, but excluding kerosene, gas oil, or fuel oil, and also excluding any product taxable as a special motor fuel under section 4041 of the Internal Revenue Code (see section 1-11.105-5). The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) The ultimate purchaser of gasoline is entitled to a refund of 1 cent per gallon for gasoline not used as fuel in a highway vehicle:

(1) Which, at the time of such use is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(2) Which, if owned by the United States, is used on the highway.

In accordance with agency procedures, necessary data shall be compiled, to the extent economically advantageous, to support a direct application to the Internal Revenue Service for refund. Such application shall be in accord with pertinent requirements of the Internal Revenue Service.

#### § 1-11.102-4 Lubricating oils.

(a) A tax at the indicated rates is imposed upon the following classes of lubricating oils sold, other than to another manufacturer or producer for resale, by a manufacturer or producer (but not upon oil sold by an importer):

(1) Cutting oils, which means oils sold for use in cutting and machining operations, including forging, drawings, rolling, shearing, punching, and stamping on metals—3 cents per gallon; and

(2) Other lubricating oils, which means all oils, regardless of origin, which are sold as lubricating oil or are suitable for use as a lubricant, not including products commonly known as grease—6 cents per gallon. Certain products, other than those commonly known as grease, are not considered to be lubricating oils, and accordingly are not subject to the tax. These include petrolatum, and fatty oils of vegetable, animal, fish, and marine origin which in their natural state are not sold as lubricating oils.

(b) An exemption is available for lubricating oils sold by a manufacturer directly to a purchaser who uses the oil for nonlubricating purposes. In applying this exemption, oils can be grouped into two classes:

(1) Oils which are exempted if the manufacturer obtains an exemption certificate from the purchaser in the form prescribed by the Treasury Regulations; and

(2) Oils which are exempted without an exemption certificate. Oils of the second class include crude neatsfoot oil; electrical transformer insulating oil; white oil; and lubricating oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes.

With the exception of oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes, oils of neither class may be sold tax-free to dealers for resale even though it is known that the oil will be used for nonlubricating purposes. If, however, oil upon which a tax has been paid is used for nonlubricating purposes, the manufacturer is entitled to a refund or credit, irrespective of whether the oil was sold directly to the consumer by the manufacturer or was sold through a dealer. A refund or credit is also allowed when lubricating oil, upon which the 6 cent per gallon tax has been paid, is used as a cutting oil taxable at 3 cents per gallon. When it is economically advantageous to do so, the exemption or refund or credit for oil sold for use or used for nonlubricating purposes, and the refund or credit for lubricating oil used as cutting oil, shall be utilized in accordance with agency procedures by a tax exclusive purchase or by adjustment of the contract price.

#### § 1-11.102-5 Refrigeration equipment.

A tax at the indicated rates is imposed upon the following supplies (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Household type refrigerators, which include units not exceeding 14 cubic feet net storage space for single or multiple cabinet installations having, or designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; household type units for the quick freezing or frozen storage of foods operated by electricity, gas, kerosene, or gasoline—5 percent;

(b) Refrigerator components, which means cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of or with, taxable household type refrigerators or quick freeze units, except when sold as a component part or accessory with the sale of complete refrigerators, refrigerating or cooling apparatus, or quick freeze units—5 percent. Exemption from the tax is available on the sale of a refrigerator component for use (or for a single resale for use) as material in the manufacture of, or as a component part of, any article, whether or not such article is subject to a manufacturers' excise tax. If, after August 31, 1955, a manufacturer uses a tax-paid refrigerator component in the manufacture of, or as a component part of, any article, such manufacturer is entitled to a credit or refund of the tax paid on the refrigerator component. The contract price of supplies purchased by any agency shall not include an amount for the manufacturers' excise tax on refrigerator components purchased for use, or after August 31, 1955 used, in the manufacture of any article; and

(c) Self-contained air-conditioning units—10 percent.

#### § 1-11.102-6 Electric, gas, and oil appliances.

A tax of 5 percent is imposed upon the following household supplies (including

parts or accessories sold therewith), whether or not used domestically, sold by a manufacturer, producer, or importer: electric, gas, or oil water heaters; electric, gas, and oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; electric flatirons, air heaters (not including furnaces), immersion heaters, blankets, sheets and spreads, mixers, whippers, and juicers, belt-driven fans, exhaust blowers, door chimes, dehumidifiers, dishwashers, floor polishers and waxes, food choppers and grinders, hedge trimmers, ice cream freezers, mangles, pants presses, and garbage disposal units; electric and gas clothes driers; and power lawn mowers. The tax is also imposed upon electric direct motor driven fans and air circulators not of the industrial type.

#### § 1-11.102-7 Electric light bulbs.

A tax of 10 percent is imposed upon electric light bulbs and tubes, not subject to any other manufacturers' excise tax, sold by a manufacturer, producer, or importer.

#### § 1-11.102-8 Radio and television receiving sets, phonographs and records, and musical instruments.

A tax of 10 percent is imposed upon the following supplies (including, except as to musical instruments, parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Radio and television receiving sets, automobile radio and television receiving sets, phonographs, and combinations of any of the foregoing, if such articles are of the entertainment type. The contract price of any of these supplies, not of the entertainment type, delivered to any agency after August 31, 1955, shall not include any amount for the manufacturers' excise tax, irrespective of the date of the contract, if the contract price is subject to adjustment for changes in the contractor's Federal excise tax burden. The exemption of sales for further manufacture does not apply to automobile radio and television receivers (see section 1-11.203); however, if tax-paid receivers are sold in connection with the sale by a manufacturer of a taxable motor vehicle, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturer's purchase price on the receiver (see section 1-11.102-1(b)); and

(b) Radio and television components, which means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the built-in type, and phonograph mechanisms, which are suitable for use on or in connection with, or as a component part of, any taxable radio and television receiver or phonograph; and phonograph records. The tax on radio and television components and phonograph records applies irrespective of whether or not they are of an entertainment type. Exemption from the tax is available as to components—

(1) Which, prior to September 1, 1955, were sold for use as material in the manufacture of, or as a component of, an article subject to a manufacturers' excise tax; or

(2) Which after August 31, 1955, are sold for use, or are actually used as material in the manufacture of, or as a component part of, any article, whether or not such article is subject to a manufacturers' excise tax.

A manufacturer using a tax-paid component within the scope of any of these exemptions, is entitled to a refund or credit of the tax paid on such component. This includes the use, after August 31, 1955, of a component in the manufacture of, or as a component part of, a nontaxable article, even though such component was purchased prior to September 1, 1955. The contract price for supplies purchased by any agency shall not include an amount for the manufacturers' excise tax on radio and television components if any of these exemptions or refunds or credits, are available to the manufacturer.

#### § 1-11.102-9 Sporting goods.

A tax of 10 percent is imposed upon certain types of sporting equipment (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer.

#### § 1-11.102-10 Photographic equipment.

A tax at the indicated rates is imposed upon the following supplies (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Cameras, not including X-ray cameras or cameras weighing more than four pounds exclusive of lens and accessories—10 percent.

(b) Camera lenses, not including still camera lenses having a focal length of more than 120 millimeters or motion picture camera lenses having a focal length of more than 30 millimeters—10 percent. Exemption from the tax is available as to camera lenses—

(1) Which, prior to September 1, 1955, were sold for use as material in the manufacture of, or as a component part of, an article subject to a manufacturers' excise tax; or

(2) Which, after August 31, 1955, are sold for use or are actually used as material in the manufacture of, or as a component part of any article, whether or not such article is subject to a manufacturers' excise tax.

A manufacturer, using a tax-paid camera lens within the scope of any of these exemptions, is entitled to a refund or credit of the tax paid on such lens. This includes the use, after August 31, 1955, of a camera lens in the manufacture of, or as a component part of, a nontaxable article, even though such lens was purchased prior to September 1, 1955. The contract price for supplies purchased by any executive agency shall not include an amount for the manufacturers' excise tax on camera lenses if any of these exemptions, refunds, or credits are available to the manufacturer;

(c) Unexposed photographic film in rolls, including motion picture film—10 percent. This tax does not apply to X-ray film; unperforated microfilm; film more than 150 feet in length; or film

more than 25 feet in length and more than 30 millimeters in width. A person who acquires unexposed film in a form not subject to tax and thereafter sells such unexposed film in form and dimensions subject to tax is treated as a manufacturer of the film so sold by him. The manufacturer of unexposed motion picture film is entitled to a credit or refund (but not an exemption) for film used or resold for use in making newsreel motion picture films covering current news events for immediate release for public exhibition; and

(d) Electric motion or still picture projectors of the household type—5 percent.

#### § 1-11.102-11 Firearms, shells, and cartridges.

A tax is imposed upon pistols and revolvers at the rate of 10 percent, and other firearms, shells, and cartridges at the rate of 11 percent, sold by a manufacturer, producer, or importer. In addition to this manufacturers' excise tax, Chapter 53A of the Internal Revenue Code (which supersedes Ch. 25, I.R.C. 1939) imposes a transfer tax and a tax on the manufacture of machine guns and certain other firearms, except that transfer to, or manufacture for, the United States is specifically exempted from these taxes.

#### § 1-11.102-12 Business machines.

A tax of 10 percent is imposed upon a wide variety of business machines (including parts or accessories sold therewith), not including cash registers of the type used in registering over-the-counter retail sales, sold by a manufacturer, producer, or importer.

#### § 1-11.102-13 Pens, mechanical pencils, and lighters.

A tax of 10 percent is imposed upon fountain and ball point pens, mechanical pencils, and mechanical lighters for cigarettes, cigars, and pipes, sold by a manufacturer, producer, or importer; except that this tax does not apply if the article also is subject to the retailers' excise tax on jewelry imposed by section 4001 of the Internal Revenue Code. If the manufacturers' excise tax has been paid, but the article is further processed so as to subject it to the retailers' excise tax, the retailer (but not the manufacturer who originally paid the tax) is entitled to a credit to the extent of the manufacturers' excise tax paid on the article. (See section 1-11.101-1.)

#### § 1-11.102-14 Matches.

A tax of 2 cents per 1,000, not to exceed 10 percent of the price for which sold, is imposed upon matches sold by a manufacturer, producer, or importer, except that the rate of 5½ cents per 1,000 for fancy wooden matches or matches having a stained, dyed, or colored stick or stem, whether packed in boxes or in bulk.

#### § 1-11.103 Excise taxes on facilities and services.

Chapter 33 of the Internal Revenue Code (which supersedes Ch. 30, I.R.C. 1939), implemented by Treasury Regu-

lation 42, imposes excise taxes on certain facilities and services, including communications, and transportation of persons. In general, the tax is based on the amount paid for the service, and is imposed upon the person paying for the service. As used throughout this section 1-11.103 the term "United States," when used in a geographical sense, means the States, the Territory of Hawaii, and the District of Columbia.

§ 1-11.103-1 Communications.

A tax is imposed on amounts paid for the following facilities and services at the rates indicated; except that only one payment of tax is required on long distance telephone or telegraph service, notwithstanding that lines or stations of more than one person are used in the transmission:

- (a) Local telephone service, which means any telephone service not otherwise taxable, excluding amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment—10 percent;
- (b) Long distance telephone service, which means any telephone or radio telephone message or conversation for which the toll charge exceeds 24 cents and for which the charge is paid within the United States—10 percent;
- (c) Telegraph service, which means a telegraph, cable, or radio dispatch or message for which the charge is paid within the United States—10 percent;
- (d) Leased wire, teletypewriter or talking circuit special service, not including any service used exclusively in rendering a service taxable as wire and equipment service under paragraph (e) of this section 1-11.103-1—10 percent. This tax applies irrespective of whether the wires or services are within a local exchange area; and
- (e) Wire and equipment service, which includes stock quotation and information services, burglar or fire alarm services, and all other similar services—8 percent. This tax applies irrespective of whether the wires or services are within a local exchange area.

§ 1-11.103-2 Transportation of persons.

(a) A tax of 10 percent is imposed upon amounts paid for the transportation of persons by rail, motor vehicle, water, or air, including charges for seating or sleeping accommodations incident to such transportation, as follows:

(1) On amounts paid within the United States for taxable transportation as defined in paragraph (b); and

(2) On amounts paid outside the United States for taxable transportation, as defined in paragraph (b), which both begins and ends in the United States.

(b) Taxable transportation:

(1) Includes transportation which begins in the United States, or in Canada or Mexico within 225 miles of the nearest point to the United States, and ends in the United States or in the aforementioned 225-mile zone;

(2) Includes transportation that begins in the United States or in the 225-mile zone and ends outside such area, transportation that begins outside the United States or the 225-mile zone and

ends inside such area, and transportation that begins and ends outside the United States and the 225-mile zone, but only to the extent that such transportation is directly or indirectly from one port or station in the United States to another port or station in the United States. (Even though it is "taxable transportation" it may not be subject to tax if the payment is made outside the United States, according to the limitation set forth in paragraph (a) (2) of this section 1-11.103-2; and

(3) Irrespective of (b) (1) and (2), does not include any portion of transportation which—

- (i) Is outside the United States;
- (ii) Is not, directly or indirectly, from the border of the United States or a port or station in the 225-mile zone to a port or station in the 225-mile zone;
- (iii) Begins either where the route of transportation leaves the United States or a port or station in the 225-mile zone, and ends either where the route enters the United States or a port or station in the 225-mile zone; and
- (iv) Passes through a point in excess of 225 miles from the United States on an imaginary direct line between the beginning and ending points specified in (iii).

(c) In determining taxable transportation, a round trip is considered to consist of transportation from the point of origin to the destination, and a separate transportation thereafter.

(d) The tax does not apply to—

- (1) Any separable and itemized charges other than those for transportation of a person, such as for an automobile, baggage, meals, hotel accommodations, insurance, and the like;
- (2) Charges incident to the charter of a conveyance for the transportation of persons, such as for parking, icing, sanitation, layover, movement of equipment in deadhead service, dockage, and the like; or
- (3) Charges for transportation by motor vehicles having a seating capacity of less than 10 persons and not operated on an established line.

§ 1-11.104 Use tax on highway motor vehicles.

(a) A tax of \$1.50 a year for each 1,000 pounds of taxable gross weight or fraction thereof is imposed upon the use, after June 30, 1956, of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States or Hawaii at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. For example, if a vehicle is placed in use during August,  $\frac{1}{12}$  of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

(b) Taxable gross weight is the sum of—

(1) The actual unloaded weight of the vehicle and any semitrailers and trailers customarily used with such a vehicle, all units fully equipped for service; and

(2) The weight of the maximum load customarily carried by all units of a vehicle of this type.

(c) The tax is payable by the person in whose name the vehicle is, or is required to be, registered under the law of any State, or if owned by the United States, by the agency or instrumentality of the United States operating such vehicle. If a tax has been paid for a particular vehicle, no further liability can be incurred in the same taxable year, even though there is a change of ownership of the vehicle.

§ 1-11.105 Selective list of supplies and services subject to Federal excise taxes.

Supplies and services	I.R.C. 1954 (26 U.S.C.) section	I.R.C. 1939 section	Treasury regulation	Section of this subpart 1-11.1
Air conditioning equipment.....	4111	3405(c)	46	1-11.102-5
Appliances, electric, gas, and oil.....	4121	3406(a)(3)	46	1-11.102-6
Automotive accessories.....	4061(b)	3403(c)	46	1-11.102-1
Binoculars, field and marine glasses.....	4001	2400	51	1-11.101-1
Business machines.....	4191	3405(a)(6)	46	1-11.102-12
Cigarette lighters.....	4201	3408	46	1-11.102-13
Communications services and facilities.....	4251	3465	42	1-11.103-1
Cutting oils.....	4091	3413	44	1-11.102-4
Diesel fuel.....	4041(a)	2450(a)	119	1-11.101-5
Electric light bulbs.....	4131	3406(a)(10)	46	1-11.102-7
Film.....	4171	3406(a)(4)	46	1-11.102-10
Firearms, shells, and cartridges.....	4181	3407, 2700	46, 47	1-11.102-11
Furs.....	4011	2401	51	1-11.101-2
Gasoline.....	4081	3412	44	1-11.102-3
Handbags.....	4031	1651(a)	51	1-11.101-4
Highway vehicles, use of.....	4481			1-11.104
Jewelry and related items.....	4001	2400	51	1-11.101-1
Lubricating oils.....	4091	3413	44	1-11.102-4
Luggage and handbags.....	4031	1651(a)	51	1-11.101-4
Motor vehicles and accessories.....	4061	3403	46	1-11.102-1
Musical instruments.....	4151	3404(d)	46	1-11.102-8
Pens, mechanical pencils, and lighters.....	4201	3408	46	1-11.102-13
Phonographs and records.....	4141	3404	46	1-11.102-8
Photographic equipment.....	4171	3406(a)(4)	46	1-11.102-10
Pistols and revolvers.....	4181	2700	46, 47	1-11.102-11
Radio and television receiving sets, parts and components.....	4141	3404	46	1-11.102-8
Refrigeration equipment.....	4111	3405	46	1-11.102-5
Shells and cartridges.....	4181	3407	46	1-11.102-11
Special fuels.....	4041	2450	119	1-11.101-5
Sporting goods.....	4161	3406(a)(4)	46	1-11.102-9
Telephone and telegraph services.....	4251	3465	42	1-11.103-1

Supplies and services	I.R.C. 1954 (26 U.S.C.) section	I.R.C. 1939 section	Treasury regulation	Section of this subpart 1-11.1
Tires and tubes.....	4071	3400	46	1-11.102-2
Toilet preparations.....	4021	2402(a)	51	1-11.101-3
Transportation of persons.....	4261	3469	42	1-11.103-2
Watches, clocks and other timepieces.....	4001	2400	51	1-11.101-1

### Subpart 1-11.2—Exemptions From Federal Excise Taxes

#### § 1-11.200 Scope of subpart.

This subpart sets forth the applicability and scope of general exemptions, credits, and refunds from the Federal excise taxes outlined in Subpart 1-11.1, and the policy governing when such exemptions, credits, and refunds are to be claimed. Particular exemptions restricted to a single tax are set forth in Subpart 1-11.1 in the discussion of each tax.

#### § 1-11.201 Supplies for exportation or shipment to a possession or to Puerto Rico.

Exemption is available from the retailers' and manufacturers' excise taxes on the sale of supplies for export or for shipment to a possession of the United States, or to Puerto Rico.

#### § 1-11.201-1 Retailers' excise taxes.

Pursuant to section 4056 of the Internal Revenue Code (which supersedes section 2406, I.R.C. 1939) and applicable Treasury Regulations, exemption is available from the retailers' excise taxes on sale of supplies for export or for shipment to a possession of the United States or Puerto Rico. This exemption shall be utilized, in accordance with agency procedures, by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession or to Puerto Rico, if—

(a) The purchase is substantial; and  
(b) Exportation or shipment to a possession or to Puerto Rico is intended to follow not more than 6 months after title passes to the Government.

#### § 1-11.201-2 Manufacturers' excise taxes.

Pursuant to section 4225 of the Internal Revenue Code (which supersedes sections 3449 and 2705, I.R.C. 1939) and applicable Treasury Regulations, exemption is available from the manufacturers' excise taxes on sales of supplies for export or for shipment to a possession of the United States or to Puerto Rico. This exemption shall be obtained only when—

(a) The purchase is substantial; and  
(b) Exportation or shipment to a possession or to Puerto Rico is intended to follow not more than 6 months after title passes to the Government.

This exemption is limited to sales by a manufacturer, and is not applicable to sales for export or shipment to a possession or to Puerto Rico from the stock of a dealer who was not the manufacturer, producer, or importer.

#### § 1-11.202 Supplies and services for the exclusive use of the United States.

By virtue of action taken by the Secretary of the Treasury, pursuant to section

4293 of the Internal Revenue Code, exemption is available, and shall be obtained from the following Federal excise taxes to the extent indicated:

(a) Tax on communication services and facilities (see section 1-11.103-1) furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government, which exemption is obtained without any exemption certificate; and

(b) Tax on transportation of persons (see section 1-11.103-2) for transportation furnished the United States upon a Government transportation request, which exemption is obtainable by use of such transportation request.

#### § 1-11.203 Supplies sold for further manufacture.

(a) Pursuant to section 4220 of the Internal Revenue Code (which supersedes section 3442, I.R.C. 1939) and applicable Treasury Regulations, supplies (other than tires, inner tubes, and automobile radios and television receivers) are exempt from manufacturers' excise taxes if sold for use by the vendee in the manufacture of, or as a component part of, another article; or for resale by the vendee for such further manufacture by his vendee, if the article is resold in due course. In applying this exemption, there are two classes of supplies:

(1) Automobile parts or accessories, refrigerator components, radio or television components, and camera lenses, the sale of which is exempt irrespective of whether or not the article to be manufactured is subject to a manufacturers' excise tax. The manufacturer is entitled to a credit or refund for the amount of the tax paid on such parts, accessories, components, or lenses if this exemption has not been utilized and if such parts, accessories, components, or lenses upon which a manufacturers' excise tax has been paid, are used in the manufacture of, or as a component part of, any article (whether or not taxable); and

(2) All other articles (other than tires, inner tubes, automobile radio and television receivers) subject to manufacturers' excise tax, the sale of which is exempt only if the article to be manufactured is subject to a manufacturers' excise tax. The manufacturer is entitled to a credit or refund of the amount of tax paid on any such article used for further manufacture if this exemption has not been utilized and if such article, upon which a manufacturers' excise tax has been paid, is used in the manufacture of, or as a component of, another article upon which a manufacturers' excise tax is subsequently paid, or which subsequently is sold tax-free as a sale for further manufacture pursuant to section 4220 of the Internal Revenue Code.

(b) These exemptions, credits, and refunds under (a) (1) and (2) are obtain-

able by the manufacturer without any action by the contracting officer. The contract price for supplies purchased by any executive agency shall not include an amount for any manufacturers' excise tax from which these exemptions, credits, or refunds are available.

#### § 1-11.204 Supplies for vessels and airplanes.

Pursuant to section 4222 of the Internal Revenue Code (which supersedes sections 3451 and 2456 I.R.C. 1939) and applicable Treasury Regulations, exemption is available from the manufacturers' excise taxes, and from the retailers' excise tax on special motor fuels imposed by section 4041(b) of the Internal Revenue Code (see section 1-11.101-5) on sales of supplies for use as sea stores, fuel supplies, ships' stores, or legitimate equipment necessary for the navigation, propulsion, and upkeep of vessels of war or military aircraft, including guided missiles and pilotless aircraft, owned or chartered by the United States. If supplies upon which a tax had been paid are sold for any of the exempt uses enumerated above, the manufacturer is entitled to a credit or refund of the tax paid, irrespective of whether the supplies are sold directly to the consumer by the manufacturer, or are sold through a dealer. When it is economically advantageous to do so, this exemption, credit, or refund shall be utilized, by purchase on a tax-exclusive basis and execution of the required exemption certificate, in accordance with executive agency procedures.

#### § 1-11.205 Exemptions from other Federal taxes.

Any executive agency that purchases supplies or services subject to a Federal excise tax, other than those specified in Chapters 31, 32, 33B, 33C, and 36D of the Internal Revenue Code which are outlined in Subpart 1-11.1, shall prescribe rules to govern the utilization of any exemptions from such tax.

#### § 1-11.206 Tax exemption forms.

Standard Government exemption forms acceptable to the Internal Revenue Service shall be used in accordance with agency procedures.

### Subpart 1-11.3—State and Local Taxes

#### § 1-11.301 Applicability.

As a general rule, Government purchases are exempt from State and local taxes. This exemption shall be made use of to the fullest extent available, by means of purchase on a tax-exclusive basis and execution of an approved tax exemption certificate. Whenever there is any doubt as to the availability of such exemption, the matter shall be referred to the appropriate office of the executive agency concerned.

#### § 1-11.302 Tax exemption forms.

Except when a different form is required by a particular state or local tax jurisdiction, Standard Form 1094 (U.S. Government Tax Exemption Certificate) Revised shall be used in accordance with agency procedures.

**Subpart 1-11.4—Contract Clause**

**§ 1-11.401 Fixed-price type contracts.**

**§ 1-11.401-1 Clause for advertised and certain negotiated contracts.**

The following clause shall be inserted in (a) all formally advertised contracts, and (b) may be used in negotiated contracts where appropriate.

**FEDERAL, STATE, AND LOCAL TAXES**

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to this contract on the tax inclusive date, except taxes from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price.

(c) (1) If the Contractor is required to pay or bear the burden (i) of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract; or (ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or of any interest or penalty thereon, the contract price shall be correspondingly increased: *Provided*, That the Contractor warrants in writing that no amount for such tax, duty or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further*, That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax involved.

(4) Nothing in this paragraph (c) shall be applicable to social security taxes; net income taxes; excess profit taxes; capital stock taxes; unemployment compensation taxes; or any State and local taxes, except those levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract, including

gross income taxes, gross receipts taxes, sales and use taxes, excise taxes, or franchise or occupation taxes measured by sales or receipts from sales.

(5) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax: *Provided*, That evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued, only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

**PART 1-12—LABOR**

Sec.	
1-12.000	Scope of part.
	<b>Subpart 1-12.1—Basic Labor Policies</b>
1-12.100	General.
1-12.101	Labor relations.
1-12.102	Overtime, extra-pay shifts, and multi-shift work.
1-12.102-1	Definitions.
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	<b>Subpart 1-12.5—[Reserved]</b>
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1-12.601	Statutory requirement.
1-12.602	Applicability.
1-12.602-1	General.
1-12.602-2	Department of Labor regulations and interpretations.
1-12.603	Responsibilities of contracting officers.
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**Subpart 1-12.7—Fair Labor Standards Act of 1938**

Sec.	
1-12.701	Basic statute.
1-12.702	Rulings on applicability or interpretation.

**§ 1-12.000 Scope of part.**

This part deals with general policies regarding labor, so far as they relate to procurement; sets forth certain pertinent labor laws and requirements, indicating in connection with each its applicability and any procedures thereunder; and prescribes the contract clauses with respect to each labor law or requirement.

**Subpart 1-12.1—Basic Labor Policies**

**§ 1-12.100 General.**

The policies and procedures stated in this Subpart 1-12.1 are recommendatory and are for the guidance of executive agencies.

**§ 1-12.101 Labor relations.**

(a) With respect to Government contract activities, procurement agencies should maintain and encourage the best possible relations with industry and labor in order that the Government may procure needed supplies and services without delay. All problems arising out of the Government contract labor relations of private contractors, and all communications with labor organizations or Federal agencies relative thereto, shall be handled in accordance with agency procedures.

(b) Procurement agencies should remain impartial in, and should refrain from taking a position on, the merits of a dispute between labor and private management. No procuring activity should undertake the conciliation, mediation, or arbitration of a labor dispute.

**§ 1-12.102 Overtime, extra-pay shifts, and multi-shift work.**

**§ 1-12.102-1 Definitions.**

As used in this section 1-12.102, the following terms shall have the meanings set forth:

(a) "Normal work week" and "normal work day" mean, generally, a work week of 40 hours and a work day of 8 hours, respectively. In any area outside the United States, its possessions, Hawaii, and Puerto Rico, a work week longer than 40 hours, or a work day longer than 8 hours, will be considered normal if (1) such work week or work day does not exceed that which is normal for such area, as determined by local custom, tradition, or law, and (2) hours worked in excess of 40 in such work week, or 8 in such work day, are not compensated at a premium rate of pay.

(b) "Overtime" means time worked by a contractor's employee in excess of the employee's normal work week or normal work day.

(c) "Shift premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base or regular work shift and that paid at the regular rate of pay for extra-pay-shift work.

(d) "Overtime premium" means the difference between the compensation

paid to an employee at the contractor's regular rate of pay for the work period or shift involved and that paid for hours worked overtime.

#### § 1-12.102-2 Policy.

Where the cost to the Government may be affected, contracts should be performed, so far as practicable, without the use of overtime, extra-pay shifts, or multi-shifts, and, in particular, without the use of overtime as a regular employment practice. Any required overtime, extra-pay shifts, and multi-shifts should be limited to the minimum needed for accomplishment of the specific work.

#### § 1-12.102-3 Procedures.

(a) To the extent practicable, invitations for bids and requests for proposals shall not specify delivery or performance schedules which may be reasonably anticipated to necessitate overtime, at Government expense.

(b) In the negotiation of contracts in excess of \$10,000, the contracting officer, consistent with the nature and size of the procurement, should use his best efforts (1) to ascertain the extent to which proposals and quotations are based on the payment of overtime premiums and shift premiums, and (2) to negotiate contract prices or estimated costs which are not based on the payment of overtime premiums or shift premiums, taking into consideration the practicability of procurement from other sources of all or part of the requirement.

(c) All contracts, other than firm fixed-price contracts or fixed-price contracts with escalation (which do not provide for any labor escalation), should provide that payment of overtime premiums and shift premiums shall be allowed, or considered in pricing, only to the extent approved in accordance with section 1-12.102-4, or as provided in section 1-12.102-5.

(d) Overtime for which overtime premiums would be at Government expense should not be approved under a contract where the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(e) Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government contracts, the continued need therefor should be subject to periodic review in accordance with agency procedures.

#### § 1-12.102-4 Approvals.

(a) In the three following situations, overtime premiums and shift premiums at Government expense may be considered proper for approval when determined in writing by the agency head, or his designee or designees, that approval:

(1) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(2) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the contractor and, in construction con-

tracts, which result from unforeseeable causes; or

(3) Is necessary to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(b) Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances.

(c) Such approvals may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable.

#### § 1-12.102-5 Other authorized overtime.

(a) Approved overtime premiums or shift premiums may be paid for work, without the approval required by section 1-12.102-4:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(3) When lower overall cost to the Government will result.

(b) In determining overtime or shift premium costs, consideration should be given to the cost of indirect labor employees, such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting; or

(c) The cost of such overtime premiums or shift premiums may be allowed, or considered in pricing (on the same basis as other indirect costs) to the extent the amount thereof is reasonable and properly allocable to the work involved.

#### § 1-12.103 Federal and State labor requirements.

Executive agencies should cooperate, and require contractors to cooperate, to the fullest extent possible, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

#### § 1-12.104 Meeting manpower requirements.

It is the policy of executive agencies to cooperate with and to encourage contractors to utilize, to the fullest extent practicable, the United States Employment Services (USES) and its affiliated local State Employment Service Offices in matters pertaining to meeting contractors' manpower (labor supply) requirements, including the recruitment of workers in all occupations and skills both from local labor market areas and through the Federal-State manpower clearance system to staff new or expanding plant facilities. Local State Employment Service Offices are operated in every State and in the District of Co-

lumbia, Hawaii, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the local State Employment Service Offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

#### Subpart 1-12.2—Convict Labor

##### § 1-12.201 Basic requirement.

Pursuant to the policy originally set forth in the Act of February 23, 1887 (18 U.S.C. 436), and in accordance with the requirements of Executive Order 325-A of May 18, 1905, all contracts entered into by any executive agency involving the employment of labor within the United States shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts.

##### § 1-12.202 Applicability.

The requirement set forth in section 1-12.201 applies, except as stated in this section 1-12.202, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of persons on parole or probation, or of persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to contracts:

(a) Subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart 1-12.6) which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract."

(b) For the purchase of supplies or services from Federal Prison Industries, Inc.

(c) For the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

##### § 1-12.203 Contract clause.

The contract clause required is as follows:

###### CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

#### Subpart 1-12.3—Eight-Hour Law of 1912 (Other Than Construction Contracts)

##### § 1-12.300 Scope of subpart.

This subpart deals with the requirements of the Eight-Hour Law of 1912, as amended (40 U.S.C. 324-326), as applicable to contracts other than construction contracts.

##### § 1-12.301 Statutory requirement.

In accordance with the requirement of the Eight-Hour Law of 1912, as amended (40 U.S.C. 324-326), certain contracts entered into by any executive agency shall contain a clause to the effect that no laborer or mechanic doing any part

of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day upon such work, unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day at not less than one and one-half times the basic rate of pay.

#### § 1-12.302 Applicability.

The requirement set forth in section 1-12.301 applies, except as stated in this section 1-12.302, to all contracts which may require or involve the employment of laborers or mechanics either by a contractor or by any subcontractor. The requirement does not apply to the following kinds of contracts:

(a) Contracts (or portions thereof) to be performed in a foreign country over which the United States has no direct legislative control, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there.

(b) Contracts with a State or political subdivision thereof (although the requirement does apply, and the contract must so provide, to a subcontract thereunder with a private person or firm).

(c) Contracts (or portions thereof) for supplies in connection with which any required services are merely incidental to the sale and do not require substantial employment of laborers or mechanics.

(d) Contracts (or portions thereof) for materials or articles (other than armor or armor plate) usually bought in the open market (although the requirement does apply, and the contract must so provide, with respect to any contract involving the performance of any class of work which is ordinarily, and not merely occasionally or to a limited extent, performed by the Government).

(e) Contracts (or portions thereof) subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart 1-12.6).

#### § 1-12.303 Contract clauses.

##### § 1-12.303-1 Clause for general use.

Except for those kinds of contracts referred to in section 1-12.303-2, the contract clause required is as follows:

##### EIGHT-HOUR LAW OF 1912—OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912, as amended (40 U.S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only

upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

##### § 1-12.303-2 Clause for contracts with a State or political subdivision.

In the case of contracts with a State or political subdivision thereof (see section 1-12.302(b)), the contract clause required shall be the clause set forth in section 1-12.303-1, except that it shall be prefaced by the following provision:

The Contractor agrees to insert the following clause in all subcontracts hereunder with private persons or firms.

##### Subpart 1-12.4—[Reserved]

##### Subpart 1-12.5—[Reserved]

#### Subpart 1-12.6—Walsh-Healey Public Contracts Act

##### § 1-12.601 Statutory requirement.

In accordance with the requirement of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) and subject to section 1-12.602, all contracts entered into by any executive agency for the manufacture or furnishing of supplies in any amount exceeding \$10,000 (a) will be with manufacturers or regular dealers, and (b) shall incorporate the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

##### § 1-12.602 Applicability.

##### § 1-12.602-1 General.

The requirement set forth in section 1-12.601 applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Hawaii, Puerto Rico, or Virgin Islands, and which exceed or may exceed \$10,000 in amount.

##### § 1-12.602-2 Department of Labor regulations and interpretations.

(a) Pursuant to the Walsh-Healey Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of said Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations."

(b) Attention is directed to an opinion of the Department of Labor that contracts which are originally \$10,000 or less, but are subsequently modified to increase the price to an amount in excess of \$10,000, are subject to the Walsh-Healey Act; and that contracts in an amount exceeding \$10,000, which are subsequently modified to a figure of \$10,000 or less, are not subject to said Act with respect to work performed after

such modification, if modification is effective by mutual agreement.

#### § 1-12.603 Responsibilities of contracting officers.

Whenever the Walsh-Healey Act is applicable, the contracting officer shall, pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective executive agency:

(a) Inform prospective contractors of the possible applicability of minimum wage determinations;

(b) Furnish to the contractor a poster (Form PC-13);

(c) Furnish to the contractor a form letter (Form PC-12) explaining application of the Walsh-Healey Act and giving instructions for display of the poster;

(d) Prepare and transmit to the Department of Labor a Notice of Award of Contract (Standard Form 99) immediately on award of the contract; and

(e) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Act.

#### § 1-12.604 Contract clause.

The contract clause required is as follows:

##### WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

#### Subpart 1-12.7—Fair Labor Standards Act of 1938

##### § 1-12.701 Basic statute.

The Fair Labor Standards Act of 1938 (29 U.S.C. 201-219) provides for the establishment of minimum wage and maximum hour standards, creates a wage and hour division in the Department of Labor for purposes of interpretation and enforcement (including investigation and inspection of Government contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or foreign commerce, or (b) the production of goods for such commerce, or (c) any closely related process or occupation essential to such production.

##### § 1-12.702 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate regional office of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

**PART 1-16—PROCUREMENT FORMS**

Sec.

- 1-16.000 Scope of part.
- Subpart 1-16.1—Forms for Advertised Supply Contracts**
- 1-16.100 Scope of subpart.  
1-16.101 Forms prescribed.  
1-16.102 Award documents.  
1-16.103 Optional use.  
1-16.104 Terms, conditions, and provisions.  
1-16.105 Incorporation of Standard Form 32 by reference.  
1-16.106 Die-cut stencils and reproducible masters.

**Subpart 1-16.2—[Reserved]****Subpart 1-16.3—Purchase and Delivery Order Forms**

- 1-16.300 Scope of subpart.  
1-16.301 Order-invoice-voucher forms.  
1-16.301-1 Purchase Order-Invoice-Voucher (Standard Form 44).  
1-16.301-2 Order-Invoice-Voucher (Standard Forms 147 and 148).

**Subpart 1-16.4—Forms for Advertised Construction Contracts**

- 1-16.400 Scope of subpart.  
1-16.401 Forms prescribed.  
1-16.402 Required use.  
1-16.402-1 Contracts estimated not to exceed \$2,000.  
1-16.402-2 Contracts estimated to exceed \$2,000 but not to exceed \$10,000.  
1-16.402-3 Contracts estimated to exceed \$10,000.  
1-16.402-4 Explanation of Standard Forms 19 and 19A.  
1-16.403 Optional use.  
1-16.404 Terms, conditions, and provisions.  
1-16.404-1 Revision of Standard Form 23A.  
1-16.405 Die-cut stencils and reproducible masters.  
1-16.406 Covenant against contingent fees.

**Subpart 1-16.5—[Reserved]****Subpart 1-16.6—[Reserved]****Subpart 1-16.7—[Reserved]****Subpart 1-16.8—Miscellaneous Forms**

- 1-16.800 Scope of subpart.  
1-16.801 Bond forms.

**§ 1-16.000 Scope of part.**

This part prescribes forms for use by executive agencies in connection with the procurement of supplies, nonpersonal services, and construction.

**Subpart 1-16.1—Forms for Advertised Supply Contracts****§ 1-16.100 Scope of subpart.**

This subpart prescribes forms for use in procuring supplies by formal advertising.

**§ 1-16.101 Forms prescribed.**

The following standard forms are prescribed for use when entering into contracts for supplies, except as provided in section 1-16.103:

(a) Award (Supply Contract) (Standard Form 26, November 1949 edition).

(b) Invitation and Bid (Supply Contract) (Standard Form 30, October 1957 edition).

(c) Schedule (Supply Contract) (Standard Form 31, November 1949 edition).

(d) General Provisions (Supply Contract) (Standard Form 32, October 1957 edition).

(e) Invitation, Bid, and Award (Supply Contract) (Standard Form 33, October 1957 edition).

(f) Continuation Sheet (Supply Contract) (Standard Form 36, November 1949 edition).

Invitations may be issued and bids received on either Standard Form 30 (with Standard Form 31 attached) or Standard Form 33.

**§ 1-16.102 Award documents.**

When invitations for bids are issued on Standard Forms 30 and 31, award shall be made on Standard Form 26 or by other official written notice. When invitations are issued on Standard Form 33, award shall be made on Standard Form 33, on Standard Form 26, or by other official written notice. For example, award may be made on a purchase order form when award and related documentation requirements (such as furnishing delivery instructions or providing information copies of the award for required Government use) can thereby be accomplished simultaneously.

**§ 1-16.103 Optional use.**

(a) The forms prescribed in section 1-16.101 may, with appropriate adaptation (subject to section 1-1.009-2(d) of this chapter) be used, at the option of the agency, when entering into the following contracts:

(1) Contracts executed in foreign countries.

(2) Contracts for nonpersonal services, including utility services.

(3) Contracts for solid and liquid fuels and petroleum products.

(4) Contracts for construction, alteration, maintenance, or repair of ships, craft, boats, vessels, and other floating equipment, such as, but not limited to, floating dry docks, cranes and barges.

(5) Contracts for indefinite quantities which permit orders to be issued against such contracts by ordering offices of more than one Federal agency.

(b) The forms prescribed by section 1-16.101 may be used in negotiated procurement if appropriate changes are made in accordance with section 1-1.009-2(d). For example, the words "and shall be publicly opened" may be lined out.

**§ 1-16.104 Terms, conditions, and provisions.**

(a) Additional terms, conditions, and provisions considered by an agency to be essential to its procurement and not inconsistent with those contained in the forms prescribed in this Subpart 1-16.1 may be incorporated in invitations for bids in which these forms are used. Each executive agency shall review periodically such additional terms, conditions, and provisions which are in common use in such agency with a view to standardization of those in general use and elimination of unnecessary additions, and shall, from time to time, forward to the Administrator of General Services such additional terms, conditions, and provisions as are considered

desirable for inclusion in the standard forms.

(b) In the interest of establishing and maintaining uniformity in Government contracts to the greatest extent feasible, deviations from the forms prescribed by this Subpart 1-16.1 shall be kept to a minimum. Deviations may be authorized in accordance with section 1-1.009 of this chapter.

**§ 1-16.105 Incorporation of Standard Form 32 by reference.**

Since Standard Form 32 is incorporated by reference in the Invitation for Bids portion of Standard Forms 30 and 33, it is not necessary to attach Standard Form 32 each time invitations for bids are issued to concerns regularly doing business with the Government. However, when a revised edition of Standard Form 32 is issued it is essential that agencies distribute copies thereof to all prospective bidders on their mailing lists, requesting that the form be retained for future reference. Additional copies of the form must be made available promptly on request. If desired, a single copy of Standard Form 32 may accompany the invitation for bids.

**§ 1-16.106 Die-cut stencils and reproducible masters.**

(a) The use of die-cut stencils or reproducible masters for printing Standard Forms 26, 30, 31, 33, and 36, is authorized (subject to the regulations of the Congressional Joint Committee on Printing) in order to eliminate excessive typing or overprinting in providing the necessary number of copies.

(b) The Terms and Conditions of the Invitation for Bids, which appear on the reverse of Standard Forms 30 and 33, are printed and stocked separately as Reverse of Standard Forms 30 and 33. These Terms and Conditions shall be used when reproducing Standard Forms 30 or 33 from die-cut stencils or reproducible masters, thereby eliminating the need for reproducing these standard terms each time an invitation for bids is prepared. The form may be ordered in the same manner as other standard forms.

**Subpart 1-16.2—[Reserved]****Subpart 1-16.3—Purchase and Delivery Order Forms****§ 1-16.300 Scope of subpart.**

This subpart prescribes forms for use when purchases are authorized or required to be made by the purchase order or imprest fund method, and delivery orders.

**§ 1-16.301 Order-invoice-voucher forms.****§ 1-16.301-1 Purchase Order-Invoice-Voucher (Standard Form 44).**

Standard Form 44 is authorized for use to accomplish small purchases in accordance with section 1-3.605-1.

**§ 1-16.301-2 Order - Invoice - Voucher (Standard Forms 147 and 148).**

Standard Form 147 (Order-Invoice-Voucher) and Standard Form 148 (Continuation Sheet, Order-Invoice-Voucher).

are prescribed for use in accordance with section 1-3.605-2.

### Subpart 1-16.4—Forms for Advertised Construction Contracts

#### § 1-16.400 Scope of subpart.

This subpart prescribes forms for use in procuring construction by formal advertising.

#### § 1-16.401 Forms prescribed.

The following standard forms are prescribed for use in accordance with this Subpart 1-16.4:

(a) Invitation, Bid, and Award (Construction, Alteration, or Repair) (Standard Form 19, January 1959 edition).

(b) Labor Standard Provisions—Applicable to Contracts in Excess of \$2,000 (Standard Form 19A, January 1959 edition).

(c) Invitation for Bids (Construction Contract) (Standard Form 20, March 1953 edition).

(d) Bid Form (Construction Contract) (Standard Form 21, January 1959 edition). (Pending availability of this edition, agencies shall substitute the small business representation thereon for the small business representation on the 1957 edition of this form.)

(e) Instructions to Bidders (Construction Contract) (Standard Form 22, March 1953 edition).

(f) Construction Contract (Standard Form 23, March 1953 edition).

(g) General Provisions (Construction Contract) (Standard Form 23A, March 1953 edition). (Changes specified in section 1-16.404-1 shall be made when using this form.)

#### § 1-16.402 Required use.

The forms prescribed by section 1-16.401 shall be used for fixed price contracts, entered into pursuant to formal advertising, for construction (including alteration or repair) of public buildings or works, except for: contracts for the construction, alteration, or repair of vessels; and contracts for construction, alteration, or repair work in foreign countries. Determination as to the form or forms to be used in each instance shall be made in accordance with this section 1-16.402.

#### § 1-16.402-1 Contracts estimated not to exceed \$2,000.

Standard Form 19 shall be used for contracts estimated not to exceed \$2,000. Standard Form 22 also may be used.

#### § 1-16.402-2 Contracts estimated to exceed \$2,000 but not to exceed \$10,000.

Standard Forms 19 and 19A shall be used for contracts estimated to exceed \$2,000 but not to exceed \$10,000. Standard Form 22 also may be used.

(a) The following language shall be inserted in the space provided in the

Bid portion of Standard Form 19 prior to issuance of the invitation:

The undersigned further agrees, if this bid exceeds \$2,000, TO COMPLY with the Labor Standards Provisions Applicable to Contracts in Excess of \$2,000 (Standard Form 19A) in lieu of those in Provision 10 hereof; TO PAY not less than the minimum hourly rates of wages set forth in the specifications; and TO FURNISH a performance bond in an amount equal to \_\_\_\_\_ percent and a payment bond in an amount equal to 50 percent of the contract price with surety or sureties acceptable to the Government.

(b) In all cases where the provision set forth in section 1-16.402-2(a) is inserted, the officer awarding the contract shall (1) determine the amount of the performance bond which he deems adequate for the protection of the United States; (2) insert the appropriate figure in the blank space provided therefor; and (3) include in the specifications the appropriate wage rate determination of the Secretary of Labor. It will be noted that both the provision and Standard Form 19A are clearly inapplicable unless the bid exceeds \$2,000.

#### § 1-16.402-3 Contracts estimated to exceed \$10,000.

Standard Form 20, 21, 22, 23, and 23A shall be used for contracts estimated to exceed \$10,000.

#### § 1-16.402-4 Explanation of Standard Forms 19 and 19A.

(a) Standard Form 19 (Invitation, Bid, and Award) provides a single sheet form on which bids may be solicited, submitted, and accepted. The General Provisions on the reverse are adequate for contracts of \$2,000 or less and become adequate for contracts in excess of that amount when Standard Form 19A is added.

(b) Whenever the Government's estimate indicates that the low bid will, or may, exceed \$2,000, the language prescribed in section 1-16.402-2(a) shall be inserted in the Bid portion of Standard Form 19; Standard Form 19A shall be attached; and the appropriate wage rate determination of the Secretary of Labor shall be incorporated in the specifications.

#### § 1-16.403 Optional use.

Use of the forms prescribed in section 1-16.401 for negotiated contracts is optional. However, in the interest of uniformity, it is recommended that these forms be used (within the areas outlined in section 1-16.402-1, 1-16.402-2, and 1-16.402-3) for contracts entered into on the basis of competitive bids but which are termed negotiated contracts because the requirements of formal advertising are not fully met. When used for negotiated contracts, the forms will be adapted as required by agency procedures (e.g., the requirement that bids be "sealed" and "publicly opened" may be lined out).

#### § 1-16.404 Terms, conditions, and provisions.

(a) Additional terms, conditions, and provisions considered by any agency to be essential to its contractual relationships and not inconsistent with those contained in the forms prescribed in this Subpart 1-16.4 may be incorporated in invitations for bids in which these forms are used by so providing in addenda to the forms, in the Alterations paragraph of Standard Form 23, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions. Each executive agency shall review periodically such additional terms, conditions, and provisions which are in common use in such agency with a view to standardization of those in general use and elimination of unnecessary additions, and shall, from time to time, forward to the Administrator of General Services such additional terms, conditions, and provisions as are considered desirable for inclusion in the standard forms.

(b) In the interest of establishing and maintaining uniformity in Government contracts to the greatest extent feasible, deviations from the forms prescribed in this Subpart 1-16.4 shall be kept to a minimum. Deviations may be authorized in accordance with section 1-1.009 of this chapter. When a deviation is authorized, changes shall be made in addenda to the forms, in the Alterations paragraph of Standard Form 23, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions.

(c) The language of section 1-16.404 (a) shall not be construed to authorize the use with Standard Form 19 of clauses which appear in Standard Form 23A and which were condensed or omitted in the development of Standard Form 19 in the interests of simplification and uniformity. Where such use is deemed essential, the matter shall be handled as a deviation as provided in section 1-16.404(b).

(d) Clause 3 (Disputes) of Standard Form 19 may be altered, by appropriate provision in addenda to the form, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions, to define "head of the Federal agency" or to provide for an intermediate appeal board procedure.

(e) During periods of national emergency, agencies may, with the prior approval of the Administrator of General Services, amend paragraph (c) of Clause 5 (Termination for Default-Damages for Delay-Time Extensions) of Standard Form 23A by deleting the word "unforeseeable" and inserting after the word "causes," where it first appears in the first sentence, the phrase, "other than normal weather,".

**§ 1-16.404-1 Revision of Standard Form 23A.**

Pending revision of Standard Form 23A (March 1953 edition), agencies shall:

(a) Substitute the word "statements" for the word "affidavits" in line 9 of Clause 23 (Payroll Records and Payrolls) in order to reflect the amendment of the Copeland (Anti-Kickback) Act which was effected by section 12 of Public Law 85-800;

(b) Substitute the following for the text of Clause 19 (Nondiscrimination in Employment):

**NONDISCRIMINATION IN EMPLOYMENT**

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(c) Modify Standard Form 23A by deleting, in an appropriate manner, the words "duly certified" from line 4, paragraph (d), of Clause 7 (Payments to Contractors).

**§ 1-16.405 Die-cut stencils and reproducible masters.**

(a) The use of die-cut stencils or reproducible masters for printing Standard Forms 19, 20, and 21 is authorized (subject to the regulations of the Congressional Joint Committee on Printing) in order to eliminate excessive typing or overprinting in providing the necessary

number of copies. Additional wording required by any agency on any of its invitations for bids and bid forms may be preprinted on the die-cut stencils or reproducible masters, if desired. However, the sequence and wording of the items appearing on the prescribed forms shall not be altered.

(b) The General Provisions which appear on the reverse of Standard Form 19 are printed on paper suitable for reproduction purposes, and stocked separately as Reverse of Standard Form 19. In order to simplify the reproduction process, this form shall be used when printing Standard Form 19 from die-cut stencils or reproducible masters, thereby eliminating the need for reproducing these standard terms each time an invitation for bids is prepared. It may be ordered in the same manner as other standard forms.

(c) Agencies using die-cut stencils or reproducible masters for the face of Standard Form 21 are further authorized to use the following language in lieu of the language appearing at the bottom of the face of the form if it better suits their administrative requirements:

and agrees that, upon written notice that a preliminary examination of the bids indicates that he will be the successful bidder, he will within \_\_\_\_\_ calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance bond and payment bond on Government standard forms, if these forms are required, with good and sufficient sureties: *Provided*, That contract and bond forms executed by the bidder prior to award of the contract will become effective only if his bid actually is accepted within the time established herein.

**§ 1-16.406 Covenant against contingent fees.**

Whenever Standard Form 19 is used in accordance with this Subpart 1-16.4 for formally advertised contracts; the requirement of Subpart 1-1.5 of this chapter, for inclusion of the Covenant Against Contingent Fees clause, shall be inapplicable.

**Subpart 1-16.5—[Reserved]**

**Subpart 1-16.6—[Reserved]**

**Subpart 1-16.7—[Reserved]**

**Subpart 1-16.8—Miscellaneous Forms**

**§ 1-16.800 Scope of subpart.**

This subpart prescribes miscellaneous forms, other than contract forms, for use in connection with the procurement of supplies and services.

**§ 1-16.801 Bond forms.**

(a) The following standard forms shall be used, except in foreign countries, when a bid, performance, or payment bond, or an individual surety is required:

(1) Bid Bond (Standard Form 24, November 1950 edition).

(2) Performance Bond (Standard Form 25, November 1950 edition).

(3) Payment Bond (Standard Form 25A, November 1950 edition).

(4) Performance Bond (Corporate Co-Surety) (Standard Form 27, November 1950 edition).

(5) Payment Bond (Corporate Co-Surety) (Standard Form 27A, November 1950 edition).

(6) Continuation Sheet (Corporate Co-Surety) (Standard Form 27B, November 1950 edition).

(7) Affidavit of Individual Surety (Standard Form 28, November 1958 edition).

(8) Annual Bid Bond (Standard Form 34, November 1950 edition).

(9) Annual Performance Bond (Standard Form 35, November 1950 edition).

(b) The bond forms shall be used as indicated in the Instruction portion of each form and implementing agency regulations shall be consistent therewith.

Dated: March 10, 1959.

FRANKLIN FLOETE,

*Administrator of General Services.*

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