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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Franklin Delano Roosevelt Memorial Commission

Effective upon publication in the FEDERAL REGISTER § 6.165(a) is added to Schedule A as set out below.

§ 6.165 Franklin Delano Roosevelt Memorial Commission.

(a) All positions on the staff of the Commission.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended, 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-10909; Filed, Dec. 23, 1959; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[Sugar Determination 850.122]

PART 850—DOMESTIC BEET SUGAR PRODUCING AREA

Proportionate Shares for Farms—1960 Crop

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 850.122 Proportionate shares for farms in the domestic beet sugar area.

(a) *Definitions.* For the purpose of this section, the terms:

(1) "Secretary" means the Secretary of Agriculture of the United States, or

any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(2) "Deputy Administrator" means the Deputy Administrator, Production Adjustment, Commodity Stabilization Service, U.S. Department of Agriculture.

(3) "Director" means the Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture.

(4) "State Committee" means the persons in a State designated by the Secretary of Agriculture as the Agricultural Conservation and Stabilization State Committee, under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(5) "County Committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(6) "Operator" means the person (or persons) who controls and directs the sugar beet operations on the farm and who bears the major portion of the risk of financial loss or gain resulting from such operations.

(7) "Farm" shall have the meaning set forth in Part 822 of this chapter.

(8) "Producer" shall have the meaning set forth in section 101(k) of the act.

(9) "Old Producer" means the operator of a farm for which a 1960-crop base is established pursuant to paragraph (i) of this section.

(10) "New Producer" means the operator of a farm for which a 1960-crop base may not be established pursuant to the provisions of paragraph (i) of this section, or if the context indicates, the term "new Producer" shall have the meaning which has been applied under the previous years' proportionate share determinations referred to in the text.

(11) "Accredited acreage" for any crop year means the proportionate share acreage of sugar beets which was either harvested for the extraction of sugar or

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forth in subparagraphs (1) through (5) of § 842.2 of this chapter as shown by the county committee office records, excluding any acreage made available pursuant to § 850.76, Amendment 2, but including any prevented acreage approved for the farm or recorded for the proportionate share area, as the case may be, in accordance with Part 849 of this chapter (23 F.R. 7286).

(12) "Base period" means three, four, or five of the crop years of the period 1955 through 1959, including in each case the crop year 1959, as used in establishing individual farm bases in an allotment area.

(b) *National acreage, State acreage allocations, and reserve acreage.* (1) A national acreage limitation for 1960-crop sugar beets of 985,000 acres is hereby established and allocated as follows:

State:	Acres
California	213,702
Colorado	154,523
Idaho	93,966
Illinois	2,102
Indiana	44
Iowa	1,430
Kansas	8,931
Michigan	83,265
Minnesota	79,148
Montana	60,398
Nebraska	68,098
Nevada	584
New Mexico	825
North Dakota	41,242
Ohio	23,711
Oregon	20,902
South Dakota	6,343
Texas	1,905
Utah	36,206
Washington	36,404
Wisconsin	9,174
Wyoming	41,097
Reserve	1,000
Total	985,000

(2) Acreage within the reserve of 1,000 acres may be allocated to States by the Director, to provide acreage otherwise unavailable within the allocations made pursuant to subparagraph (1) of this paragraph, for increases in proportionate shares granted by the Director in accordance with paragraph (c) of this section, for the purpose of rectifying misapplications of these regulations or errors in establishing farm proportionate shares, and to provide acreage for other contingencies the meeting of which are deemed necessary to carry out the objectives of the act.

(c) *Instructions and forms.* The Director shall cause to be prepared for issuance to the State Committees such forms and internal management instructions as are necessary for carrying out the regulations of this section. Such instructions shall be approved and issued by the Deputy Administrator.

(d) *Proportionate shares.* The proportionate share of the 1960 crop of sugar beets for a farm shall be the acres established for the farm pursuant to this section within the allocation provided under paragraph (b) of this section for the State in which the farm is located, as determined in accordance with Part 842 of this chapter (23 F.R. 6784).

(e) *Administration of proportionate share program.* In each State, the State Committee shall establish individual

farm proportionate shares in accordance with the provisions of this section. In carrying out the proportionate share program within the State, it is recommended that the State Committee consult with sugar beet growers, representatives of sugar beet grower associations, representatives of sugar beet processors, or combinations of these groups. The State Committee shall formulate the standards and procedures in written form for establishing proportionate shares within the State in accordance with the provisions of this section. Such standards and procedures shall be reviewed by the Director for conformity with the provisions of this section and to assure reasonable uniformity between adjoining areas in adjacent States, shall be subject to the approval of the Director, and shall be available for public inspection in State and county offices. The basic standards and procedures for each State shall become effective when published in the FEDERAL REGISTER.

(f) *Requests for proportionate shares.* Except as hereinafter provided, any operator of a farm for the 1960-crop season desiring a proportionate share shall file a written request therefor with the local Agricultural Stabilization and Conservation county office by the closing date set forth below for the State. Where more than one person shares in the control and direction of the sugar beet operations on the farm and in the risk of financial gain or loss of such operations, the request for a proportionate share shall be made in the name of all such persons by the person (or persons) who bears the major portion of the gain or loss. A request for a proportionate share with respect to a farm to be operated by a corporation or partnership shall be made in the name of the corporation or partnership. Each request shall specify the location of the land and identity of the farm, and shall include a statement that the person (or persons) signing the request will be the operator of the farm at the time of planting 1960-crop sugar beets thereon and that he (or they) plans to continue as operator of the farm throughout the 1960-crop season and that he (or they) will promptly notify the county committee of any changes which are made during the season in the operations of the farm. The name of the owner or lessor of the land comprising the farm, if different from the operator thereof, also shall be stated on such request. Where the operator of a 1960-crop farm, or the specific land to be included in a 1960-crop farm, may be unknown by such closing date, the owner of a farm, or a prospective farm operator may file a preliminary request which shall serve as the basis for computing a tentative proportionate share pursuant to paragraph (i) or (j) of this section, pending the filing of a completed request for a farm proportionate share in full detail within 60 days following such closing date or such later date established as hereinafter provided. The computation of a tentative proportionate share as aforesaid shall not constitute the establishment of a proportionate share for a farm, but will merely serve as a representation that a farm propor-

liquid sugar or was determined by a member of the county committee to have been bona fide abandoned acreage to the extent of fulfilling at least the requirements for abandonment payment set

tionate share may be established upon the filing of a fully-completed request for a farm proportionate share in the time and in the manner as provided above in this paragraph. A request form may be obtained from local Agricultural Stabilization and Conservation county offices, from fieldmen of sugar companies or from such other source as the State Committee may designate. The State Committee shall publicize directions for filing such requests. To assure consideration in the initial distribution of acreage pursuant to paragraph (i) and (j) of this section, a request shall be filed on or before the effective closing date: *Provided*, That a request may be accepted after the effective date for consideration with respect to available acreage, if the State Committee determines that the person desiring a share was prevented from filing by such date because of absence, illness or other reason beyond his control: *And provided further*, That requests may be accepted generally by the State Committee after such date if the total acreage covered by bona fide requests filed by such date by old producers is less than the acreage available for distribution to old producers, or if acreage is available within the area allotment, as established pursuant to paragraph (h) of this section:

State:	Date
California:	
Northern Area.....	Dec. 31, 1959.
Imperial Area.....	Mar. 25, 1960.
Colorado.....	Jan. 29, 1960.
Idaho.....	Jan. 15, 1960.
Illinois.....	Mar. 18, 1960.
Indiana.....	Mar. 18, 1960.
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If the total acreage requested in any State does not exceed the State allocation at the expiration of a reasonable time for the acceptance of requests generally following the closing date, the shares for both old and new producers in the State may be established by the State Committee so as to coincide with the requested acreages without carrying out the detailed procedure otherwise required under paragraphs (g), (h), (i) and (j) of this section.

(g) *Set-aside Acreage for New Producers, appeals, and adjustments.* Not less than two percent of the State acreage allocation shall be set aside for establishing proportionate shares for farms operated by new producers, except that such set-aside may be reduced to not less than one-half of one percent of such allocation if the entire acreage involved in such reduction is set aside and used to increase the proportionate shares for farms with small

shares (small producers) in accordance with paragraph (i) (4) of this section. Not less than one percent shall be set aside for adjustments under appeals. Any acreage required to supplement the acreage available from initial proportionate shares in excess of requested acreages in making adjustments in initial proportionate shares pursuant to paragraph (i) (4) of this section may also be set aside.

(h) *Subdivision of State acreage allocations.* Before establishing individual farm proportionate shares, the State Committee may subdivide the State acreage allocation into allotments for areas within the State, such as the territory served by a beet sugar company, a county, or a group of counties. In making such subdivision a formula shall be used, to give consideration to past production and ability to produce sugar beets, which formula shall be approved by the Director, and shall be based upon average accredited acreages for the various areas for three, four or five of the crop years 1955 through 1959, or upon the higher for each area of average accredited acreages for such years or the 1959-crop area allotment. Such formula may utilize a floor or ceiling derived from accredited acreages or area allotments for one or more of such years. If the State acreage allocation is not subdivided, proportionate shares will be established directly from such allocation and the State shall be deemed to be one allotment area. Subject to the provisions of paragraph (k) of this section, unused acreage in any area may be reallocated by the State Committee among other areas within the State.

(i) *Establishment of individual proportionate shares for old-producer farms—(1) General.* In establishing proportionate shares for individual farms from area allotments, the State Committee shall use a formula to give consideration to the factors of past production of sugar beets and ability to produce sugar beets. These factors shall be measured as hereinafter provided in this paragraph by reference to the sugar beet accredited acreage record for the farm, or if the farm operator is a tenant in an allotment area where sugar beet production is organized around tenant-operators rather than around units of land, they may be measured by reference to all or a portion of the personal sugar beet accredited acreage record of the farm operator within the State or allotment area; or by all or a portion of the accredited acreage record of the farm which such tenant will operate during the 1960-crop year but not less than the landowner's shares of the sugar beet crops covered by such acreage record during the base period; or by the larger of such personal accredited acreage record and all or a portion of such farm record; or they may be measured by a combination of all or a portion of such personal accredited acreage record and all or a portion of such farm record. A floor or ceiling derived from previous proportionate shares or acreages may be used in connection with the foregoing described methods for determining proportionate shares. The measurements

and formulas adopted by the State Committee shall be specified in the procedure formulated by it. The same base period shall be used in applying a formula to accredited acreage records with respect to all farms in an allotment area. In case of death, retirement, or incapacity of a tenant, his personal sugar beet production record shall be credited to the administrator or executor of his estate or to a member of his family, if in the year of such death, retirement, or incapacity, or in the following year, such administrator, executor or family member continues as a tenant the customary sugar beet operations of the deceased or incapacitated tenant. In case of the merger or consolidation of two or more corporations, the sugar beet production record of any of the constituent corporations shall be credited to the surviving or consolidated corporation if in the year of the merger or consolidation, or in the following year, the surviving or consolidated corporation operates land as a tenant and produces sugar beets. The personal sugar beet production records of individuals or of a partnership forming a corporation may not be credited to such corporation. Upon the dissolution of a corporation, no personal history credits of the corporation shall be transferred to individuals. Where a person having a personal accredited acreage record during the base period in an area where such records are used, and another person or persons initiate a joint operation of a farm for the production of the 1960 crop of sugar beets by a partnership, sharing arrangement or other form of joint enterprise, the proportionate share for the farm shall be established on the basis of and measured by the landowner's share of the sugar beet crops covered by the accredited acreage record for the farm during the base period notwithstanding the tenancy status of any of such persons, unless the county committee determines that such joint enterprise is conducted exclusively by the immediate members of a family, or that under such joint enterprise the person or persons having the accredited acreage record during the base period share in the control and direction of the sugar beet operations and bear a significant portion of the risk of financial loss or gain resulting from such operations. If, as aforesaid, the county committee determines with respect to such a joint operation of a farm that it is a family operation or that the person or persons having the accredited acreage record during the base period will continue to share in the control and direction of the sugar beet operations and bear a significant portion of the risk of financial loss or gain resulting from such operations, the proportionate share for such farm shall be established on the basis of the personal accredited acreage records in accordance with the provisions of this section. The personal accredited acreage history of sugar beet production of any partnership which was dissolved prior to the planting of the 1960 crop, shall be credited to the individuals who were members of the partnership only to the extent of the acreage record contributed to such partnership

by such individual at the time it was formed; *Provided, however*, That in the event any such dissolved partnership was in existence for at least five years or such lesser time as determined and published in its standards and procedures by the State Committee, the acreage history of the partnership may be credited to each of the former partners in accordance with a written agreement signed by all of the former partners or their legal representatives. The proportionate share established, or which would have been established, pursuant to this paragraph (i) for any land removed from sugar beet production because of transfer by sale, lease or donation to any Federal, State or other agency or entity, having the right of eminent domain, shall, upon application to the State Committee within three years from the date of such transfer, be added to the proportionate share, if any, established for other land within the State owned or purchased by the owner of the land so transferred. For the purpose of this paragraph (i) the term "1959-crop established share" shall mean the 1959 crop proportionate share determined for a farm excluding any adjustments made to offset underplanting and failure to plant.

(2) *Farm bases.* Subject to the provisions of the preceding subparagraph (1), a farm base shall be determined for each old-producer farm as provided in this subparagraph (2).

(i) *Farm history area.* In an area where personal production records are not utilized, the farm base for any farm having an accredited acreage record during the base period shall be computed by applying a formula to such record; *Provided*, That for any farm for which a new-producer share was established for any crop year subsequent to the first year of the base period or for any 1960 farm consisting of two or more 1959 farms for each of which a new-producer share was established for any year subsequent to the first year of the base period, the base shall be the larger of the acreage resulting from the application of the formula, or the 1959-crop accredited acreage for the farm or farms but not in excess of the 1959-crop established share or shares for the farm or farms.

(ii) *Personal history area.* In an allotment area where personal production records of tenants are utilized, the farm base for any farm operated for the 1960-crop year by a tenant having a personal accredited acreage record during the base period shall be computed by applying a formula to all or a portion of such record; to all or a portion of the accredited acreage record of the farm during the base period but to not less than the landowner's shares of the crops covered by such accredited acreage record; to the larger of either all or a portion of such personal accredited acreage record or all or a portion of such accredited acreage record of the farm during the base period; or to a combination of all or a portion of such personal record and all or a portion of such record of the farm during the base period; *Provided*, That for any farm operated for the 1960-crop year by such a tenant who operated a

farm during the year for which a new-producer share was established for such farm for any crop in any crop year subsequent to the first crop year of the base period, the base shall be the largest of the acreage resulting from the application of the formula to his personal accredited acreage record; the 1959-crop accredited acreage for the farm operated by him during the 1959-crop year but not in excess of the 1959-crop established share for such farm; or the acreage resulting from the application of the formula to the landowner's shares of the sugar beet crops covered by the accredited acreage record during the base period for the farm which such tenant will operate in the 1960-crop year. For any farm in a personal history area which is operated for the 1960-crop year by the owner, or by a tenant who has no personal accredited acreage record during the base period, the farm base shall be computed by applying the formula to the accredited acreage record of the farm during the base period, or to a portion of the accredited acreage record of the farm for each year during the base period, but to not less than the landowner's shares of the crops covered by such accredited acreage record; *Provided*, That for any farm operated for the 1960-crop year by the owner and which was operated by the owner during the year for which a new-producer share was established for any crop year subsequent to the first year of the base period, the base shall be the larger of the acreage resulting from the application of the formula to the accredited acreage record of the farm, or the 1959-crop accredited acreage for the farm but not in excess of the 1959-crop established share for the farm. In each allotment area in which portions of accredited acreage records of farms during a base period are used for determining farm bases, as provided in this division (ii), the State Committee shall use similar portions of the accredited acreage records for all farms of the same category in the allotment area.

(3) *Initial shares.* In any allotment area in which the total of farm bases is equal to or smaller than the area allotted less the set-asides of acreage made pursuant to paragraph (g) of this section, initial farm proportionate shares shall be established as follows: For farms for which the respective requested acreages are equal to or less than their farm bases, the initial shares shall coincide with the requested acreages; and for all other farms, initial shares shall be computed by prorating to such farms, in accordance with their respective bases, the area allotment less such set-asides and the total of the initial shares of the farms for which the requested acreages are equal to or less than their farm bases. In any allotment area in which the total of farm bases exceeds the area allotted less the set-asides of acreage made pursuant to paragraph (g) of this section, initial farm proportionate shares shall be computed by prorating to the farms in accordance with their respective bases, but not in excess of their requests, the area allotment less such set-asides.

(4) *Adjustments.* Initial proportionate shares shall be adjusted by the State

Committee to the extent determined by it to be necessary to establish a proportionate share for each farm which is fair and equitable, as compared with proportionate shares for all other farms in the allotment area, by taking into consideration availability and suitability of land, area of available fields, crop rotation, availability of irrigation water (where irrigation is used), adequacy of drainage, availability of production and marketing facilities, and the production experience of the operator. If the State Committee determines that the share established for any new producer who is rated as outstanding pursuant to the provisions of paragraph (j) of this section does not fully recognize the production experience of such producer, such share may be adjusted to a level commensurate with such experience and by taking into consideration the other factors enumerated above. If any acreage is set aside for increasing small-producer shares under paragraph (g) of this section, all of such acreage shall be used in increasing the shares for farms in the area for which the relatively smallest shares would otherwise be established pursuant to this section and for which additional acreages are requested, by taking into consideration the factors enumerated above and the need for increasing such shares insofar as possible to the minimum acreage economically feasible to plant as determined by the State Committee pursuant to paragraph (j) of this section, with primary consideration being given to farms with small shares which are operated by producers who operated farms for which new-producer shares were established in any year subsequent to the first year of the base period and which have production credits for the 1959 crop, and to farms having production records for each crop year in the base period where a three-year base period is used or for each of the last three or four years if a four- or five-year base period is used.

(j) *Establishment of individual proportionate shares for new-producer farms.* Within the acreage set aside for new-producer farms from the State acreage allocation pursuant to paragraph (g) of this section and other unused acreage that the State Committee determines should be used for new producers, proportionate shares shall be established in an equitable manner for farms which are to be operated by new producers during the 1960-crop year. The State Committee shall determine and specify in the standards and procedures published in the FEDERAL REGISTER the minimum acreage which is economically feasible to plant as a new-producer farm proportionate share. The State Committee shall also determine whether distribution of acreage for establishing new-producer shares will be made on the basis of counties or groups of counties within the allotment area. If distribution of such acreage is made on the basis of counties or groups of counties, such distribution shall be made pro-rata in multiples of the minimum economic unit of acreage which is economically feasible to plant as a new-producer share (treating fractional units by in-

creasing such fractional units to minimum economic units, or dropping such fractional units when less than minimum units) on the basis of the total 1960-crop farm bases of old-producer farms within such counties or on such other basis as is approved by the Director and is set forth in the standards and procedures published in the FEDERAL REGISTER. In determining whether a farm for which a request is filed for a new-producer proportionate share may qualify for such a share, the State Committee (or such County Committees designated by the State Committee in its standards and procedures to rate qualifications of applicants within the county or group of counties subject to review by the State Committee), shall rate each request as outstanding, well-qualified or less-qualified by taking into consideration availability and suitability of land, availability of irrigation water (where irrigation is used), adequacy of drainage, the production experience of the operator, and the availability of production and marketing facilities. In the consideration of the availability of such facilities, the combined costs of the producer and the processor for transporting beets from the farm to the nearest sugar beet factory, within broad rate limits, may be taken into account. To be rated outstanding, an applicant must have had significant sugar beet production experience and must rate at least well-qualified on all of the other items of consideration. Where there is insufficient acreage set aside for new producers within an allotment area, county, or group of counties, to establish minimum new-producer shares for all farms whose operators are rated as outstanding and well-qualified under the aforesaid considerations, such shares shall be established for farms whose operators are rated as outstanding, and the acreage remaining in the set-aside shall be used to establish minimum shares for those farms whose operators are rated as well-qualified and who are selected by lot. If the production experience of the operator indicates that a share larger than the minimum economic unit should be established as provided in paragraph (i) (4), any additional acreage required shall be obtained from acreage set aside for the purposes set forth in such paragraph. Where there is not sufficient acreage set aside for new producers within an allotment area, county, or group of counties to establish minimum new-producer shares for all farms whose operators are rated as outstanding under the aforesaid considerations, minimum shares shall be established for those farms whose operators are rated outstanding and who are selected by lot. Each drawing by lot shall be supervised by a representative of the State Committee, or by a representative of the county committee designated by the State Committee if the distribution of new-producer acreage is made by counties or groups of counties. Each person requesting a new-producer share who will be included in the drawing, shall be given a reasonable advance notice of the drawing and an opportunity to attend. The names (or corresponding numbers) of all such persons

shall be placed in a container in such a manner that they are indistinguishable to the person making the "draws". Before the drawing, the person in charge shall announce whether the selections are to be made on consecutive draws or on some other specific basis. The entire acreage set aside for new producers shall be allotted to new producers, if requested, unless the State Committee finds that new-producer farms would then be allotted shares out of proportion to the shares established for old-producer farms and such committee obtains the approval of the Director to allot a lesser acreage. Any acreage set aside for new producers and not requested and any acreage allotted to new producers and remaining unused, shall be available for distribution to other farms.

(k) *Distribution of unused proportionate share acreage.* Revisions in proportionate shares may be made within the State acreage allocation throughout the crop season, or during a part thereof, in accordance with procedures established by the State Committee to offset underplanting and failure to plant. Such revisions may be effected on a sub-area basis, such as counties, sugar factory districts, or sugar company territories. In case of a disagreement between producers and a sugar beet processor with respect to the sugar beet purchase contract to be effective in the settlement area, or where no company offers a contract to producers to cover fully the shares established for their farms, the shares allotted to the farms operated by such producers shall not be reduced unless the affected producers voluntarily agree to reductions in their respective proportionate shares or the State Committee determines that such shares should be reduced because of unusual circumstances and for good cause and that the involved acreages should be reallocated by the State Committee to other producers.

(l) *Notification of proportionate shares.* Each farm operator filing a request shall be notified in writing on behalf of the State Committee of the proportionate share established in response to his request, even if the acreage established is "none", and such notice shall inform him of his right to appeal under paragraph (o) of this section; and each such farm operator shall be notified in writing of any cancellation or adjustment made in the proportionate share as provided in this section. In any case in which a tentative proportionate share is computed pursuant to a preliminary request for a proportionate share as provided in paragraph (f) of this section, the person filing the preliminary request shall be furnished a notice which shall inform him that the acreage stated thereon as a tentative proportionate share does not constitute the establishment of a farm proportionate share for the purpose of payment under the act, and that a farm proportionate share for such purpose may be established only upon the filing of a fully-completed request for a farm proportionate share within the time and in the manner as provided in paragraph (f) of this section. The farm operator of each farm for which a farm propor-

tionate share is redetermined in accordance with the provisions of paragraph (n) of this section shall be notified in writing on behalf of the State Committee of the redetermined proportionate share and of the right to appeal therefrom as provided in paragraph (o) of this section.

(m) *Notification of excess sugar beet acreage.* If the county committee determines that the measured acreage of sugar beets for any farm is in excess of the proportionate share established for such farm, written notice of such excess acreage and of the eligibility requirements for payment as set forth in paragraph (p) of this section shall be furnished to the operator of such farm.

(n) *Redetermination of proportionate shares.* For the purpose of this paragraph, the division or combination of a farm or farms and the reconstitution of a farm or farms referred to in this subparagraph shall be those which give effect to the definition of a farm set forth in Part 822 of this chapter. Farm proportionate shares shall be redetermined under the following circumstances:

(1) *Reconstitution of farms—(i) Before planting time.* Where a farm, as constituted at the time the 1960-crop proportionate share is established for it, is subdivided prior to planting time, the share established for such farm shall be cancelled, each subdivision shall be credited with the record of accredited acreage thereon during the base period, if available, or, if not available, with its pro-rata share of such accredited acreage based upon the percentage that the acreage suitable for the production of sugar beets in such subdivision is of the total acreage suitable for the production of sugar beets in the farm of which it was a part, and a new proportionate share shall be determined for each such subdivision or farm of which such subdivision becomes a part in accordance with paragraph (i) or (j) of this section, subject to acreage available. Where two or more old-producer farms are combined prior to planting time, the share or shares established therefor shall be cancelled and a new share shall be established for such combined farm in accordance with paragraph (i) of this section, subject to acreage available. Where a 1960-crop new-producer share is established for a farm, and such farm is combined with another farm or is subdivided, the new-producer share or shares shall be cancelled and the share or shares shall be redetermined in accordance with paragraphs (i) or (j) of this section, whichever is applicable.

(ii) *After planting time but prior to harvest.* The provisions of this subdivision (ii) shall apply only if a cancellation and redetermination of a farm proportionate share is not required as provided in the following subparagraph (2) of this paragraph. Where a farm, as constituted at the time a 1960-crop proportionate share is established for it, is combined with another 1960 farm or part thereof subsequent to planting time but prior to harvest of the 1960-crop beets, the proportionate share established for such farm shall be added to the share, if any, established for the

farm with which it is combined to establish a proportionate share for the combined farm. Where a farm, as constituted at the time a 1960-crop proportionate share is established for it, is subdivided and each division becomes a separate farm or part of another farm subsequent to planting time but prior to harvest of the 1960-crop beets, the proportionate share established for such farm shall be prorated to the subdivisions on the basis of the acreage planted to 1960-crop sugar beets on each subdivision. Such prorated portions of the 1960-crop proportionate share so determined shall then be added to the 1960-crop proportionate share, if any, of the land with which it is combined to establish a proportionate share for each such reconstituted farm.

(2) *Improper credit for personal history.* If a 1960-crop proportionate share was established for a farm with consideration for the personal history of a person who had no interest or did not acquire any interest in such farm as a tenant, the proportionate share for the farm shall be cancelled and a proportionate share determined for the farm as provided in paragraphs (i) or (j) of this section, whichever is applicable. If the county committee determines that any farm for which the proportionate share was established with consideration for the personal history of a person (or persons) is being operated jointly with or is being operated by another person (or persons), excluding a joint operation conducted exclusively by the immediate members of the family of the person contributing the personal acreage history credit; or that any such farm is subdivided into or is combined with one or more other farms, the State Committee shall be notified of the circumstances and the proportionate share for the farm shall be cancelled and a new share or shares for the farm, combined farms, or subdivisions of such farm shall be established in accordance with the provisions of paragraphs (i) or (j) of this section, whichever is applicable: *Provided, however,* That in any case where planting has occurred and in which the State Committee is satisfied that the foregoing changes in operations were not made as an attempt to transfer a proportionate share or proportionate share history, it may make an exception and recognize the proportionate share as originally established. In determining whether to make an exception, the State Committee shall be guided by whether the person (or persons), whose personal history was considered in establishing the original share for the farm, shares to a significant extent in the risk of financial loss or gain from the sugar beet operations and whether the joint enterprise, or transfer of operations to another person (or persons) represents normal, sound operational arrangements which would be undertaken in the absence of sugar beet acreage controls.

(3) *Erroneous notice of 1960 proportionate share or of excess sugar beet acreage.* If through error, a producer is officially notified of a 1960 proportionate share for his farm greater than the proportionate share properly established pursuant to this section, or is furnished

an incorrect notice of excess sugar beet acreage, or if the measured acreage of sugar beets is in excess of the proportionate share for the farm and a notice thereof is not mailed to the producer, and it is found by the State Committee that such producer, acting solely on the information contained in the erroneous notice or without a notice of excess sugar beet acreage being mailed to him, marketed 1960-crop sugar beets from an acreage in excess of the proportionate share properly established, the producer will be deemed to be in compliance with the farm proportionate share unless he marketed sugar beets for sugar from an acreage in excess of the proportionate share stated in the erroneous notice or unless it is determined by the State Committee that the error in the proportionate share or notice was so gross, or that the excess acreage was so gross as to place the producer on notice regarding the error in the proportionate share or in the existence of the excess acreage. However, the Sugar Act payment with respect to the farm shall be limited to the amount of sugar commercially recoverable from the sugar beets marketed (or processed) from the acreage within the properly established proportionate share. If the proportionate share for any farm was established by the use of incorrect data, resulting in a proportionate share smaller than the share that would have been established by the use of correct data, such share shall be increased to the correct level from acreage available within the State acreage allocation or, if no acreage is available in such allocation, the case shall be transmitted to the Director, for appropriate action as provided in paragraph (b) (2) of this section.

(c) *Appeals.* A farm operator who believes that the proportionate share established for his farm pursuant to this section was improperly established may file a written appeal for reconsideration of such proportionate share at the local Agricultural Stabilization and Conservation county office, not later than the date shown in the notification of proportionate share as established by the State Committee. The appeal shall be accompanied by a statement of facts constituting the basis for such appeal. The appeal shall be reviewed in such county office and forwarded with recommendations to the Agricultural Stabilization and Conservation State Office. The appeal shall be reviewed and acted upon by the State Committee, or in lieu thereof, by a sugar beet appeals committee to be designated by the State Committee and to be composed of three members, including at least one member of the State Committee. The other two members shall be either State Committeemen or employees of the ASC State Office, or one of each. Any increase in the proportionate share approved by reason of the appeal shall be within the acreage set aside for appeals pursuant to paragraph (g) of this section and any other acreage remaining unused within the State allocation. The operator shall be notified in writing as soon as possible regarding the decision in his case. If the farm operator is dissatisfied with the decision in his case, he may

appeal in writing to the Director, whose decision shall be final. In acting upon the appeal, the State Committee, the Sugar Beet Appeals Committee, or the Director shall consider only such matters as under the provisions of this determination are required or permitted to be considered by the State Committee in the establishment of the farm proportionate share to be reviewed.

(p) *Eligibility for payment under the Act.* For any producer of 1960-crop sugar beets on the farm to be eligible for payment under the act, the acreage of sugar beets grown on the farm and marketed (or processed) for the production of sugar or liquid sugar shall not exceed the proportionate share determined for the farm in accordance with this section, except as provided in paragraph (n) (3) of this section, and except that any sugar beets grown on acreage in excess of such proportionate share may be marketed (or processed) for the extraction of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the operator-producer on the farm furnishes to the county committee weight tickets evidencing that such sugar beets were sold by him, or were processed by or for him, for the extraction of sugar or liquid sugar for livestock feed, or for the production of livestock feed, and if so sold, were purchased by the processor for such purpose. Also, the requirements of the act with respect to child labor shall have been met, except that such requirements shall not be applicable to any sugar beets marketed (or processed) from an acreage in excess of the proportionate share for the farm for the production of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the producer furnishes proof which the county committee finds acceptable and adequate that the work performed by any child subject to such requirements was related solely to such sugar beets. In addition, the requirements of the act and of the regulations issued pursuant thereto with respect to wage rates and, in the case of a processor-producer (a producer who is also a processor), prices paid for sugar beets shall have been met.

(q) *Filing application for payment.* Application for payments authorized under Title III of the act with respect to sugar beets planted on a farm for harvest during the 1960-crop season shall be made on form SU-110 by the producer on the farm, or his legal representative, who must sign the form and file it in the Agricultural Stabilization and Conservation county office for the county wherein the farm is located, or with a representative of such office, no later than December 31, 1962.

(r) *Determination of eligibility and basis for payment; and appeals for review thereof.* Compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment, and the amount thereof, shall be determined by the county committee, unless as otherwise provided in regulations relating to conditional payments. Determinations by the county committee shall be made and decided in accordance with the ap-

plicable provisions of the act and regulations issued by the Secretary thereunder and on the basis of the facts in the individual case. Within 15 days after notice of such a determination is forwarded to or made available to a producer, he may request the county committee in writing to reconsider such determination. The county committee shall notify him of its decision in writing. If the producer believes that his case has not been properly considered by the county committee, he may, within 15 days after the date of mailing of the decision to him, appeal in writing to the State Committee. The State Committee shall notify him of its decision in writing within 30 days after the submission of his appeal. If the producer believes that his case has not been properly considered by the State Committee, he may, within 15 days after the date of mailing of the decision to him, request the Secretary to review the decision of the State Committee. The decision of the Secretary shall be final.

(s) *Obtaining information regarding eligibility for payment.* Where it is necessary to obtain information to assist the county committee in determining compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment or the amount thereof, or to assist the State Committee or the Secretary in reviewing, upon appeal, any such determination by the county committee, any such information with respect to acreage or compliance shall be obtained to the extent possible as provided in the applicable provisions of Part 718 of Chapter VII of this title (24 F.R. 4223), as amended. In the absence of a provision in such Part 718 for obtaining any such information, any employee of the county committee or employees of the State Committee designated respectively by the county office manager or by the State Administrative Officer to be qualified to perform such a duty may obtain such information. If the operator, or his representative, of any farm with respect to which application is made for any payment authorized under Title III of the act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, as provided in this paragraph, the conditions prescribed by the act and regulations for any such payment shall be deemed not to have been met until such farm operator or his representative permits such information to be obtained.

STATEMENT OF BASES AND CONSIDERATIONS

Sugar Act requirements. As a condition for payment, section 301(b) of the act provides that there shall not have been marketed (or processed), except for livestock feed or for the production of livestock feed, an acreage of sugar beets grown on the farm and used for the production of sugar or liquid sugar in excess of the proportionate share for the farm as determined by the Secretary pursuant to section 302 of the act. In the domes-

tic beet sugar area, the term "proportionate share" is the individual farm's share of the total acreage of sugar beets required to enable the producing area to meet its quota (and provide a normal carryover inventory) as estimated by the Secretary for the calendar year during which the larger part of the sugar from such crop normally would be marketed.

Section 302(a) of the act provides that the amount of sugar with respect to which payment may be made shall be the amount of sugar commercially recoverable from the sugar beets grown on a farm and marketed (or processed by the producer) for sugar or liquid sugar not in excess of the proportionate share established for the farm.

Section 302(b) provides that in determining the proportionate share for a farm, the Secretary may take into consideration the past production on the farm of sugar beets marketed (or processed) within the proportionate share for the extraction of sugar or liquid sugar and the ability to produce such sugar beets, and that the Secretary shall, insofar as practicable, protect the interests of new producers and small producers, and the interests of producers who are cash tenants, share tenants, or sharecroppers, and of the producers in any local producing area whose past production has been adversely, seriously and generally affected by drought, storm, flood, freeze, disease or insects, or other similar abnormal and uncontrollable conditions.

General. Restrictive proportionate shares are required when the prospective supply of sugar for an area will exceed the sum of the quota plus a normal carryover inventory for such area.

No restrictions were applicable to the sugar beet acreage during the war or post-war period until 1955. In 1955 when the Sugar Act fixed the beet sugar marketing quota of 1,800,000 tons, the crop was restricted to 850,000 acres. In 1956, the act was amended to permit domestic areas to participate in filling increased requirements of the domestic market and to have a priority in filling deficits resulting from such increased quotas. Accordingly the limitations on the subsequent crops have ranged from 950,000 acres in 1957 to 925,000 acres in 1959.

Although the crop limitations were established after consultation with the industry and consideration of all available information, they did not provide sufficient sugar to enable the industry to follow orderly marketing practices and to fill the large quotas resulting from increased requirements, Puerto Rican droughts and the Hawaiian strike. In 1957, the beet sugar industry had to resort to constructive deliveries of 84,000 tons from its new crop in order to fill the quota of 2,071,000 tons. In 1958, despite constructive deliveries of 82,000 tons, the industry failed by 102,000 tons to market the 2,342,000 tons of quota to which it was entitled. This year it appears that the industry will fail to fill its marketing quota of 2,267,665 tons.

Since acreage controls have been in effect, inventories have declined relative to marketings. During the five years im-

mediately prior to the adoption of acreage controls in 1955 the effective inventories on January 1 ranged from 75 percent to 90 percent of the quantity marketed during the year and in three of the years, the percentages ranged from 87 to 90. In 1958, the effective inventories amounted to 71 percent of the maximum marketing quota and in 1959, they amounted to 72 percent of the quota. Such low inventories have restricted marketings during the heavy consuming months and encouraged unusually heavy marketings of new-crop sugar in the closing months of the year.

Public hearing. An informal public hearing was held by the Department in Denver, Colorado, on June 25, 1959, for the purpose of discussing 1960-crop allotments. In a letter sent to sugar beet growers and processors on June 11 and in a press release of the same date announcing the hearing, the Department outlined a general plan for establishing 1960-crop shares, which was similar in most respects to that effective under the 1955-59 programs, but which included several proposed changes. Industry representatives presented considerable testimony and also subsequently submitted numerous briefs. The Department also obtained many helpful comments regarding a desirable 1960-crop program from ASC State Offices.

Recommendations on the acreage limitation for the 1960 crop were requested of sugar beet grower associations and processors at the hearing and by letter of August 7, 1959. Responses were industry-wide, with a majority favoring acreages within a range of 925,000 to 950,000 acres and a few preferring 975,000 acres or no limits.

The Department proposed at the hearing that 1,000 acres be reserved for use at the national level in lieu of 2,500 acres, as formerly established. After deducting the national reserve acreage from the total limitation as decided upon, the balance would be apportioned among the beet-producing States in a manner similar to that used for 1959.

No specific set-aside of acreage for new producers was proposed, although one percent was suggested for appeals and the set-aside for adjustments in initial shares could be varied by States depending upon needs.

It was proposed that in establishing individual farm shares the ASC State Committees use average acreages for the three-year period 1957-59. However, if the three-year average was deemed inappropriate, the Department could approve the use of a four- or a five-year consecutive average, ending with 1959. Alternatives to simple averages might be approved, if fully justified.

The Department proposed that, except where members of a family wish to create a combined operation, personal history credit would not be used in establishing the 1960-crop share for any farm if the individual, partnership or other entity that earned the credit brings another person or entity into the 1960 beet operations in an operating capacity. It was also proposed that if the personal history of an individual is used to establish the proportionate share for a farm

and it is later determined that another person or entity is brought into the sugar beet operations, the share would be redetermined on the basis of the landowner's share of the land history. These proposals were designed to reserve shares solely for persons entitled to them and to avoid the pretended use of shares by such persons when actually someone else operates the farm. Modifications of these were also presented. These modifications would allow such combined operations, provided that the ASC State Committee determines that such joint ventures represent normal, sound operational plans which might be undertaken in the absence of a sugar beet acreage control program and which would not be designed solely or primarily to establish proportionate shares so as to gain advantage over other producers.

Since the beginning of restrictions, provision has been made to reallocate unused acreage among growers within an area and among areas within a State. As a result, certain growers who deliberately overplant and whose shares are increased subsequently, gain history-wise at the expense of other growers who plant within their shares. It was proposed that history credits at the farm level would be limited to plantings and approved "prevented" plantings within proportionate shares as originally established, plus additions under appeals.

Determination. In order to enable the industry to fill the prospective basic quota and deficit reallocations in 1960 and restore year-end inventories to a normal level, it is determined that 985,000 acres of sugar beets will be needed in 1960.

As proposed at the hearing, the acreage reserved for possible contingencies is set at 1,000 acres to assure provision for possible special needs.

The balance of the national acreage limitation remaining after withdrawal of the 1,000-acre reserve is allocated to the twenty-two sugar beet producing States by using as a base acreage for each such State the larger of (a) the 1959-crop allocation of the State, or (b) the State's pro rata share of 922,500 acres (the acreage prorated for the 1959 crop) based upon 1955-58 average creditable acreages, except that because of grants from the national reserve in transfer cases, the base for Kansas is increased 447 acres and the base for Montana is increased 39 acres (a revision of the 76 acres proposed at the hearing).

The 60,000-acre increase in the allowable national acreage, for 1960 as compared with 1959, warrants the increase in the set-aside for new producers (and certain small producers) from one percent to two percent. In recognition of very tight acreage situations in a few States and the fact that the shares which otherwise would be established for a number of former new producers and small producers (who have produced regularly) would be smaller than the economic unit to be recognized for the 1960 crop, the determination authorizes the use of acreage within this set-aside up to a maximum of one and

one-half percent of the State allocation for increasing the shares of such producers. The provisions relating to adjustments in initial shares specify how such small shares are to be increased.

The new-producer provisions authorize the establishment of new-producer shares by counties or groups of counties, within an allotment area, as well as by such an area as formerly. While this basis was not discussed at the hearing, it is known to be favored in a number of States having substantial percentages of the national allocation and represents a practical method for distributing such acreage.

In accordance with the proposal at the hearing, State Committees will use average acreages for the three-year period 1957-59 in establishing individual farm shares. However, if the three-year average is not deemed appropriate, the average acreages for four or five consecutive years, ending with 1959, may be used of approved in advance by the Department. Furthermore, alternatives to simple averages may be approved, if fully justified.

To avoid the improper use of proportionate shares in areas where such shares are established with consideration for the personal history of tenants, this determination provides for a redetermination of any such share if anyone else enters into the operation unless it involves only the immediate members of the family, or unless the State Committee is satisfied that the entry into the operations of such person does not represent an attempt to transfer a proportionate share or proportionate share history.

The proposed denial of history credit for adjustments in shares beyond those effected initially or made under appeals was abandoned. The acreages produced within such adjustments undeniably constitute past production for which credit is desired for the local area and State. To allow the credit for the area and the State, while denying it for individual producers, would be inconsistent. A new paragraph has been added specifically requiring the notification of farm operators regarding acreages in excess of proportionate shares.

As formerly, ASC State Committees are authorized to consult with representatives of growers and processors in the development of proportionate share procedures and such procedures will be subject to the approval of the Director of the Sugar Division. Most of the general provisions of the determination are continued unchanged.

Accordingly, I hereby find and conclude that the aforesaid determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. Sup. 1131, 1132)

Issued this 18th day of December 1959.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 59-10908; Filed, Dec. 23, 1959; 8:45 a.m.]

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

[Milk Order 27]

PART 927—MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the New York-New Jersey milk marketing area (7 CFR Part 927), it is hereby found and determined that:

(a) The following provision of the order does not tend to effectuate the declared policy of the Act with respect to payments required by the order (§ 927.70) to be made by handlers directly to producers in January 1960 and succeeding months prior to the effective date of an order amending such provision:

(1) Subparagraph (6) of § 927.71(b) which reads: (6) The differential shall be reduced by 10 percent for each full .01 that the ratio computed pursuant to (i) of this subparagraph exceeds the ratio computed pursuant to (ii) of this subparagraph:

(i) Divide the total receipts of milk subject to the nearby differential in the preceding 12 months by the total Class I-A milk in such 12 months, and

(ii) Divide the total receipts of milk subject to the nearby differential in the first 12 months of this provision by the total Class I-A milk in the first 12 months of this provision.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof, are found to be impracticable, unnecessary, and contrary to the public interest in that:

(1) This order merely extends the period of time during which the same provision was suspended on May 25, 1959 (24 F.R. 4203), with respect to producer payments in the months of June through December 1959. As to such suspension order, notice and opportunity for submission of data, views and arguments was afforded (24 F.R. 3608).

(2) The information on which this action is based is the record of a public hearing held on October 27, 1959, at which evidence was received on proposed amendment of the provision the suspension of which is hereby extended.

(3) Time does not permit the detailed analysis of the hearing record and the public procedure incident to an appropriate amendment of the order to be effective by the end of the period for which the aforesaid provision previously was suspended.

(c) Good cause exists for making this suspension order effective beginning with payments required to be made in January 1960 in that:

(1) Otherwise, such payments would be reduced inappropriately, and

(2) This action will not affect the cost of milk to any handler and will not require of handlers or other persons substantial or extensive preparation prior to its effective date.

It is therefore ordered, That the aforesaid provision is hereby suspended effective with respect to payments required to be made by handlers directly to producers in January 1960 and succeeding months prior to the effective date of an order amending such provision.

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

Issued at Washington, D.C., this 18th day of December, 1959.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 59-10906; Filed, Dec. 23, 1959;
8:45 a.m.]

[Milk Order 118]

PART 1018—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Southeastern Florida marketing area (7 CFR Part 1018), it is hereby found and determined that:

(a) § 1018.43(b)(1) of the order will not tend to effectuate the declared policy of the Act for the period from the effective date hereof through February 29, 1960.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This suspension order was requested by the cooperative association representing more than 95 percent of all producers on the market.

(4) Plant facilities within 350 miles from Boca Raton, Florida, are not adequate to handle the current volume of milk production for the Southeastern Florida market.

(5) Under existing circumstances, it is not possible to find a Class I use for all of the milk which will be transferred to nonpool plants.

(6) A public hearing was held at Fort Lauderdale, Florida, on October 5-6, 1959, at which evidence was presented in support of an order amendment which would provide substantially the same relief as provided by this suspension or-

der. Time does not permit the detailed analysis of this record and the issuance of an appropriate amendment to the order. This suspension action will provide interim relief until such time as an appropriate amendment to the order can be made.

Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended effective upon issuance of this suspension order for the period from the effective date hereof through February 29, 1960.

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

Issued at Washington, D.C., this 18th day of December 1959.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-10907; Filed, Dec. 23, 1959;
8:45 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS IN DOMESTIC ANIMALS

Subpart D—Designation of Modified Certified Brucellosis-Free Areas, Public Stockyards, and Slaughtering Establishments

BRUCELLOSIS-FREE AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 114a-1, 120, 121, 125), § 78.13 of said regulations designating modified certified brucellosis-free areas is amended in the following respects:

1. The paragraph headed "Alabama" is amended to read:

Alabama: Calhoun, Cherokee, Cleburne, Covington, De Kalb, Etowah, Geneva, Houston, Jackson, Marshall, and Randolph Counties;

2. The paragraph headed "Arkansas" is amended to read:

Arkansas: Baxter, Benton, Boone, Calhoun, Carroll, Clark, Cleburne, Columbia, Conway, Dallas, Faulkner, Franklin, Fulton, Garland, Grant, Hempstead, Hot Spring, Independence, Izard, Johnson, Lafayette, Logan, Madison, Marion, Montgomery,

Nevada, Newton, Ouachita, Perry, Pike, Polk, Pope, Saline, Sebastian, Scott, Searcy, Sharp, Stone, Union, Van Buren, Washington, White, and Yell Counties;

3. The paragraph headed "California" is amended to read:

California: Amador, Alpine, Butte, Colusa, Del Norte, El Dorado, Humboldt, Inyo, Lake, Lassen, Marin, Modoc, Mono, Nevada, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yuba, and Yolo Counties;

4. The paragraph headed "Colorado" is amended to read:

Colorado: Alamosa, Archuleta, Chaffee, Conejos, Costilla, Custer, Delta, Denver, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Lincoln, Logan, Mesa, Moffat, Montezuma, Montrose, Ouray, Phillips, Pitkin, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick and Washington Counties; Southern Ute Indian Reservation and Ute Mountain Ute Reservation;

5. The paragraph headed "Florida" is amended to read:

Florida: Baker, Bay, Calhoun, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington Counties;

6. The paragraph headed "Georgia" is amended to read:

Georgia: Appling, Atkinson, Bacon, Baldwin, Baker, Banks, Bartow, Barrow, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bryan, Bullock, Burke, Butts, Candler, Catoosa, Carroll, Calhoun, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Floyd, Forsyth, Franklin, Fulton, Glimmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Houston, Irwin, Jackson, Jasper, Jefferson, Jeff Davis, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Lowndes, Long, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Monroe, Montgomery, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Talbot, Tattnall, Taylor, Telfair, Tift, Toombs, Towns, Truetlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitefield, Wilcox, Wilkes, Wilkinson, and Worth Counties;

7. The paragraph headed "Illinois" is amended to read:

Illinois: Boone, Bond, Bureau, Champaign, Clay, Clinton, Coles, Cook, Cumberland, DeKalb, DuPage, Edgar, Effingham, Fayette, Ford, Greene, Grundy, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Lake, La Salle, Lawrence, Lee, Livingston, McHenry, McLean, Macon, Monroe, Moultrie, Ogle, Perry, Stephenson, Vermillion, Wabash, Washington, Will, Woodford, and Winnebago Counties;

8. The paragraph headed "Indiana" is amended to read:

Indiana: Adams, Allen, Benton, Blackford, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Dearborn, Decatur, DeKalb, Delaware, Dubois, Elkhart, Floyd, Fulton, Grant, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jennings, Jasper, Jay, Johnson, Lagrange, Lake, La Porte, Madison, Marion, Marshall, Martin, Noble, Ohio, Orange, Parks, Perry, Pike, Porter, Posey, Fulaski, Randolph, Ripley, Rush, Shelby, St. Joseph, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warrick, Washington, Wayne, Wells, and Whitley Counties;

9. The paragraph headed "Kentucky" is amended to read:

Kentucky: Anderson, Boyd, Bracken, Caloway, Campbell, Carter, Elliott, Fulton, Graves, Greenup, Hickman, Hopkins, Jackson, Johnson, Lawrence, Lincoln, Metcalf, Morgan, Rockcastle, Rowan, Simpson, Todd, Trigg, Trimble, Warren, and Wolfe Counties;

10. The paragraph headed "Mississippi" is amended to read:

Mississippi: Alcorn, Attala, Benton, Chocataw, Clay, Forrest, Franklin, George, Greene, Hancock, Harrison, Itawamba, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Lee, Monroe, Newton, Neshoba, Oktibbeha, Perry, Pike, Pontotoc, Prentiss, Smith, Tippah, Tishomingo, Union, Walthall, Webster, Winston, and Yalobusha Counties;

11. The paragraph headed "Missouri" is amended to read:

Missouri: Andrew, Bates, Berry, Bollinger, Boone, Butler, Cape Girardeau, Carroll, Cass, Chariton, Christian, Dade, Dallas, Daviess, Dent, Douglas, Franklin, Greene, Hickory, Iron, Jackson, Jasper, Jefferson, Lafayette, Lawrence, Lincoln, Monroe, Montgomery, Newton, Oregon, Osage, Perry, Pettis, Phelps, Polk, Putnam, Ralls, Ray, Reynolds, Ripley, St. Charles, St. Francois, St. Genevieve, Shelby, Stoddard, Texas, Warren, Webster, Worth, and Wright Counties;

12. The paragraph headed "Montana" is amended to read:

Montana: Beaverhead, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Glacier, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Powell, Prairie, Ravalli, Richland, Sanders, Silver Bow, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties;

13. The paragraph headed "Nebraska" is amended to read:

Nebraska: Adams, Butler, Cass, Cedar, Clay, Colfax, Dakota, Deuel, Dixon, Dodge, Douglas, Fillmore, Franklin, Furnas, Hall, Hamilton, Howard, Jefferson, Johnson, Madison, Merrick, Nance, Nemaha, Nuckolls, Pierce, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Seward, Stanton, Thayer, Thurston, Washington, Wayne, and York Counties;

14. The paragraph headed "New York" is amended to read:

New York: The entire State.

15. The paragraph headed "North Dakota" is amended to read:

North Dakota: Adams, Barnes, Benson, Bottineau, Bowman, Burke, Cass, Cavalier, Divide, Dunn, Emmons, Grand Forks, Foster, Grant, Griggs, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Steele, Towner, Traill, Walsh, Ward, Wells, and Williams Counties;

16. The paragraph headed "Ohio" is amended to read:

Ohio: Athens, Belmont, Carroll, Columbiana, Cuyahoga, Drake, Fulton, Guernsey, Hancock, Henry, Hardin, Hocking, Jackson, Knox, Logan, Lucas, Mohoning, Meigs, Monroe, Morrow, Morgan, Muskingum, Noble, Ottawa, Paulding, Putnam, Scioto, Seneca, Shelby, Tuscarawas, Van Wert, Vinton, Washington, Wood and Wyandot Counties;

17. The paragraph headed "Tennessee" is amended to read:

Tennessee: The entire State.

18. The paragraph headed "Texas" is amended to read:

Texas: Brewster, Crane, Jeff Davis, Presidio, Ward, and Winkler Counties.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 13, 65 Stat. 693; 21 U.S.C. 111-113, 114a-1, 120, 121, 125; 19 F.R. 74, as amended; 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendment deletes Golden Valley, Phillips, and Roosevelt Counties in Montana, and Lancaster and Otoe Counties in Nebraska from the list of areas designated as modified certified brucellosis-free areas, because it has been determined that such counties no longer come within the definition of § 78.1(i), and adds certain additional areas which have been determined to come within such definition.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 21st day of December 1959.

R. J. ANDERSON,
Director, Animal Disease Eradication Division, Agricultural Research Service.

[F.R. Doc. 59-10953; Filed, Dec. 23, 1959; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Regulatory Docket No. 136; Amdt. 30]

PART 514—TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES

TSO—C13b, Life Preservers

A proposed amendment to § 514.23 establishing minimum performance standards for life preservers used on civil aircraft of the United States was published in 24 F.R. 7965.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 2662), Part 514 of the regulations of the Administrator (14 CFR Part 514) is hereby amended as follows:

Section 514.23 is amended as follows:
§ 514.23 Life preservers—TSO—C13b.

(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for life preservers which specifically are required to be approved for use on civil aircraft of the United States. New models of life preservers manufactured on or after January 15, 1960, shall meet the standards set forth in ATA Specification No. 801, "Airline Life Jackets," dated July 1, 1958.¹ Life preservers approved by the Administrator prior to January 15, 1960, may continue to be manufactured under the provisions of their original approval.

(b) *Marking.* Each life preserver shall be marked in accordance with § 514.3 except that the weight specified in paragraph (c) of § 514.3 may be omitted, and the following additional information shall be shown:

(1) Date of manufacture of fabric (month and year);
(2) "Adult" or "child", as the case may be.

(c) *Data requirements.* One copy each of the manufacturer's operation and inflation instructions shall be furnished the Chief, Engineering and Manufacturing Division, Federal Aviation Agency, Washington 25, D.C., with the statement of conformance.

(d) *Effective date.* January 15, 1960.
(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421)

Issued in Washington, D.C., on December 17, 1959.

E. PUTNAM,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 59-10912; Filed, Dec. 23, 1959; 8:45 a.m.]

¹ Copies may be obtained from the Air Transport Association, 1000 Connecticut Avenue NW., Washington 6, D.C.

RULES AND REGULATIONS

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Reg. Docket No. 219; Amdt. 143]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Part 609 (14 CFR Part 609) is amended as follows:

1. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Sallinas VOR	NSU-RBn	Direct	4000	T-dn	300-1	300-1	300-3/4
Saratoga Int.	NSU-RBn	Direct	6000	C-d	900-2	900-2	900-2
Davenport Int.	NSU-RBn	Direct	4000	C-n	900-3	900-3	900-3
				A-d	1000-2	1000-2	1000-2
				A-n	1000-3	1000-3	1000-3

Procedure turn W side of crs, 310° Outbnd, 130° Inbnd, 1800' within 10 ml.

Minimum altitude over facility on final approach crs, 1200'.

Crs and distance, facility to airport, 094-1.1.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1.1 ml, turn left, climb to 1800' on crs of 310° within 10 ml of NSU-RBn.

CAUTION: Circling minimums do not provide standard clearance over terrain South of airport. All maneuvering for circling approaches must be accomplished North of East-West Runway.

AM CARRIER NOTE: No reductions in visibility minimums authorized, except for takeoff on Rwny 23.

NOTE: "Z" Marker on request only.

City, Monterey; State, Calif.; Airport Name, Monterey Peninsula; Elev., 220'; Fac. Class., MHZ; Ident., NSU; Procedure No. 1, Amdt. 15; Eff. Date, 16 Jan. 60; Sup. Amdt. No. 14; Dated, 10 Jan. 59

2. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
GJT VOR	Fruita Int*	Direct	8000	T-dn	400-1	400-1	300-1
Loma Int.	Fruita Int (Final)*	Direct	8000	C-dn#	600-1 1/2	600-2	600-2
Int GJT VOR R-047 and NW crs ILS	Fruita Int*	Direct	8000	S-dn-11**	400-1	400-1	400-1
Int GJT VOR R-303 and NW crs ILS	Int GJT VOR R-320 and NW crs ILS	Direct	11,000	A-dn	1000-2	1000-2	1000-2
Int GJT VOR R-320 and NW crs ILS	Loma Int.	Direct	8000				

Shuttle to 8000' in a standard right hand holding pattern at *Fruita Int, 110° inbnd, 230° outbnd, within 10 ml.

Procedure turn South side NW crs, 290° outbnd, 110° inbnd, 8000' within 10 ml of Fruita Int. NA beyond 10 miles due to terrain.

Minimum altitude at G.S. Int. inbnd, 8000'.

Minimum altitude over *Fruita Int on final approach crs, 8000'.

Altitude of G.S. and distance to approach end of rwny at OM, 6000'-3.9 ml; at MM, 5065'-0.6 ml.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished make a right climbing turn, climb to 8000' on NW crs of ILS to *Fruita Int. If second approach not desired, proceed to GJT VOR, climbing to 10,000'.

AM CARRIER NOTE: Sliding scale and provisions for reduced visibility not applicable.

NOTE: Simultaneous reception of GJT VOR and ILS required for this procedure.

*Fruita Int: Int NW crs ILS and GJT VOR R-010.

#All maneuvering to South of airport; high terrain North.

**500-1 required with any component of the ILS inoperative.

City, Grand Junction; State, Colo.; Airport Name, Walker Field; Elev., 4853'; Fac. Class., ILS; Ident. GJT; Procedure No. ILS-11, Amdt. 12; Eff. Date, 16 Jan. 60; Sup. Amdt. No. 11; Dated, 14 Dec. 57

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Salinas VOR	LMM	Direct	4000	T-dn	300-1	300-1	300-1½
Dayenport Int	LOM	Direct	2000	S-dn-10	300-2	300-2	300-1½
NSU-RBn	LOM	Direct	1800	C-d	700-2	700-2	700-2
				C-n	700-3	700-3	700-3
				A-d	700-2	700-2	700-2
				A-n	700-3	700-3	700-3

Procedure turn South side of W crs, 276° Outbnd, 096° Inbnd, 1700' within 10 mi. Beyond 19 mi NA.

Minimum altitude at G.S. int inbnd, 1700'.

Altitude of G.S. and distance to approach end of rwy at LOM, 1630'-4.1 mi; at MM, 370'-0.5 mi. If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 miles after passing LMM make immediate left climbing turn and climb to 1800' to LOM.

CAUTION: Circling minimums do not provide standard clearance over terrain south of airport. All maneuvering for circling approaches must be accomplished north of localizer course.

NOTE: Provisions for use with inoperative components not applicable.

AIR CARRIER NOTE: No reductions in visibility minimums authorized, except for takeoff on Rwy 23.

City, Monterey, State, Calif.; Airport Name, Monterey Peninsula; Elev., 220'; Fac. Class., ILS; Ident., I-MRY; Procedure No. ILS-10 Amdt. 4; Eff. Date, 16 Jan. 60; Sup. Amdt. No. 3; Dated, 11 Dec. 58

3. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes												Ceiling and visibility minimums				
From	To	Dist.	Alt.	Condition	2-engine or less		More than 2-engine, more than 65 knots									
													65 knots or less	More than 65 knots		
010	160	5	1500	10	6500	15	8000	20	9000	25	12,000	Surveillance approach				
160	320	5	1500	10	1500	17	1500	20	2500	25	2500		T-dn	300-1	300-1	200-1½
320	010	5	1500	10	1500	15	1500	20	3000	25	5000		C-dn	400-2	400-2	400-1½
													S-dn-6	400-1	400-1	400-1
													A-dn	800-2	800-2	800-2

All bearings are from the radar site with sector azimuths progressing clockwise.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 1500' on SW crs Anchorage LFR within 20 mi, or when directed by ATC:

(1) Climb to 1500' proceeding direct to Anchorage LOM, thence on crs of 244° Outbnd, 064° Inbnd, within 20 mi.

(2) Climb to 1500' on NW crs Anchorage LFR to hold at Susitna Intersection.

CAUTION: (1) Terrain 384' msl 1.6 mi SSW of airport and 1.5 mi W of approach crs to Rwy 31, and 1.6 mi S of approach crs to Rwy 6. (2) Mt. Susitna 4400' 30 miles NW terrain rising through 2000' 6 miles SE and 4000' terrain rising to 4000' 20 miles S, provide 1000' clearance within 3 miles, and 500' clearance 3-5 miles. (3) Unusable sector 245° to 285°, 15 to 25 miles and 063° to 074° 20 to 25 miles.

City, Anchorage; State, Alaska; Airport Name, International; Elev., 114' Fac. Class., Anchorage; Ident., Radar; Procedure No. 1, Amdt. 5; Eff. Date, 16 Jan. 60; Sup. Amdt. No. 4; Dated 21 Dec. 57

From	To	Dist.	Alt.	Condition	2-engine or less		More than 2-engine, more than 65 knots									
													65 knots or less	More than 65 knots		
040	090	5	1500	10	2000	15	3000	20	4400	25	5000	Surveillance approach				
090	225	5	1500	10	2000	15	3500	20	4300	25	4500		T-dn	300-1	300-1	200-1½
225	285	5	1500	10	3000	15	3500	20	4500	25	5500		C-dn*	600-2	600-2	600-2
285	040	5	2100	10	3200	15	4500	20	5000	25	6000		S-dn-01#	600-2	600-2	600-2
													S-dn-19%	700-2	700-2	700-2
													A-dn	800-2	800-2	800-2

All bearings are from the Radar Site with Sector Azimuths progressing clockwise. Radar must provide 1000' clearance for 3 miles and 500' clearance 3-5 miles of 2365' Ester Dome Mountain 6 miles Northwest, and 2022' terrain 12 miles North in vicinity of Fox RBn.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished turn east of airport and climb to 2400'. Proceed direct to FAI-LFR, then on E crs (060°) to Chena Int or, as directed by ATC, climb to 4000' on S crs ILS within 20 miles.

*All maneuvering East of airport—800' terrain within 1½ mi W of airport rising to 1000' within 2 mi.

#Runway 01: 5 miles—1500' minimum altitude; 2 miles—1300' minimum altitude.

%Runway 19: 4 miles—1600' minimum altitude; 2 miles—1200' minimum altitude.

City, Fairbanks; State, Alaska; Airport Name, Fairbanks International; Elev., 431'; Fac. Class., Fairbanks; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 16 Jan. 60

These procedures shall become effective on the dates indicated on the procedures.

(Secs. 313(a), 307(c); 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on December 21, 1959.

WILLIAM B. DAVIS,
Director, Bureau of Flight Standards.

[F.R. Doc. 59-10966; Filed, Dec. 23, 1959; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATION

[Amdt. 49]

Miscellaneous Amendments

The following sections have been revised to make the necessary changes to accommodate the admission of Hawaii as a State, as authorized by Public Law 86-3 (73 Stat. 4) and as proclaimed by the President on August 21, 1959: §§ 1.201-15, 1.201-16, 3.206-1, 3.206-2, 3.213-2, 4.201, 6.101(c), 6.201-4, 6.303, 12.104, and 12.602.1. These changes appear in their proper sequence below:

PART I—GENERAL PROVISIONS

Subpart B—Definition of Terms

§ 1.201-15 Territory.

"Territory" means any territory organized as such so long as it remains a territory.

§ 1.201-16 Possessions.

"Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Midway Island, and the guano islands, but does not include any territory or Puerto Rico.

Subpart C—General Policies

Section 1.309(c)(1)-(vii), (xiii) is amended and § 1.317 is added as follows:

§ 1.309 Preference for United States-flag privately owned ocean carriers.

(c) Applicability. (1) * * *

(vii) *Mediterranean*. Includes Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gibraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(xiii) *Hawaii-Central Pacific*. Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu, Archipelago, etc., but excluding oceanic island possessions of South American countries).

§ 1.317 Voluntary refunds.

A voluntary refund is an unconditional payment or credit, not required by any contract or other obligation, made to the Government by a contractor or subcontractor either as a voluntary payment, or as an adjustment under one or more contracts or subcontracts. In accordance with Departmental procedures, contracting officers and other authorized officials shall accept any voluntary refund which is proffered. Prime contractors should be encouraged to make voluntary refunds and to facilitate the making of such refunds by subcontractors.

Subpart E—Contingent or Other Fees

Section 1.501 is revoked and § 1.503 is amended as follows:

§ 1.501 [Revoked]

§ 1.503 Covenant against contingent fees clause.

Every contract shall contain the clause entitled "Covenant Against Contingent Fees", as set forth in § 7.103-20 of this subchapter, except as provided in § 16.401-4(g) of this subchapter.

Section 1.706-6 (c) and (d) has been revised to define highest unit price as the basis for award of set-asides for both small business and labor surplus area concerns as follows:

§ 1.706-6 Partial set-asides.

(c) In advertised procurements involving partial set-asides for small business, Invitations for Bids shall contain either substantially the following notice or the notice set forth in paragraph (d) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF SMALL BUSINESS SET-ASIDE

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids on the non-set-aside portion beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns. A small business concern is a concern that—

- (i) Is certified as a small business concern by the Small Business Administration, or
- (ii) Is not dominant in its field of operations, and, with its affiliates, employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as pre-

scribed by the Small Business Administration and promulgated by the Department, differs from that set forth in the notice in this paragraph, the notice shall be appropriately modified to reflect such definition.

(d) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (c) of this section.

NOTICE OF 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 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 apportionment is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. "Small business concern" is defined in paragraph (d) of this Notice.

(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 Addendum to this Notice. Thus, the Notice Addendum 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 separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be made 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 separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum 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.

(B) 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 Notice Addendum 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 Notice Addendum, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on separate quantities at tie-in prices.

(5) *Separate quantities at different prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent 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 negotiations for the set-aside portion of that Item.

(6) *Separate quantities at tie-in prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c) (1) above, (ii) the priority status of the firm under (c) (2) above, and (iii) the highest unit price for awards under (c) (4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) *Definitions.* A "small business concern" is a concern that (i) is certified as a

small business concern by the Small Business Administration, or (ii) is not dominant in its field operations and with its affiliates employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns; provided that, this additional requirement does not apply in connection with construction or service contracts.

(e) *Token bids.* 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.

(f) *Instruction for use, and explanation of notice addendum.* The quantity of each Item which has been set aside is set forth on the attached Notice Addendum. As provided in (b) (2), the Notice Addendum 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 (ii) 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) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the Schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each Item which has been set aside is as follows:

1 Item No.	2 Quantity set-aside	3 Quantity desired
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[The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The quantity desired column will be left blank for the bidder or offeror to fill in.]

(e) After all awards have been made on the non-set-aside portion, procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid or proposal as indicated in the foregoing notice. The set-aside portion will be awarded at the highest unit price awarded for the non-set-aside portion.

Subpart H—Labor Surplus Area Concerns

Sections 1.801-2 and 1.804-2 have been revised to provide that the status of a Labor Market Area at time of award of the set-aside portion will govern whether

or not preference will be given to concerns located in such an area; § 1.803 (a) has been revised to amend a cross-reference. The revised portions of §§ 1.801-2, 1.803(a), and 1.804-2 read as follows:

§ 1.801-2 Labor surplus area.

"Labor surplus area" means a geographical area which at the time of award is:

* * * * *
§ 1.803 Application of policy.

(a) Within the policy set forth in § 1.802, the following shall be applied to procurements which are estimated to exceed \$10,000:

* * * * *
§ 1.804-2 Set-aside procedures.

(b) In advertised procurements involving set-asides pursuant to this part, each invitation for bids shall contain either substantially the following notice or the notice set forth in paragraph (c) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Labor surplus area concerns which are also small business concerns.

Group 2. Other labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns. Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

Definitions

(1) A "labor surplus area" is a geographical area which at the time of award is—

(i) Classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of substantial labor surplus by a local State Employment Service Office at the request of any prospective contractor.

(2) A "labor surplus area concern" is a concern which (i) is located within a labor surplus area, and (ii) will perform any con-

tract awarded to it as a labor surplus area concern substantially in labor surplus areas.

(3) A "small business concern" is a concern that (1) is certified as a small business concern by the Small Business Administration, or (ii) is not dominant in its field of operations and with its affiliates employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice in this paragraph, the notice shall be appropriately modified to reflect such definition.

(c) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth in this paragraph may be used instead of that in paragraph (b) of this section.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

(a) *General*. This procurement has been divided into two parts. All concerns, whether labor surplus area concerns 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 (1) by labor surplus area concerns, and (ii) to a limited extent, by small business concerns which do not qualify as labor surplus area 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. Definitions of the following terms are set forth in paragraph (d) of this Notice:

- (1) Labor Surplus Area
- (2) Labor Surplus Area Concern
- (3) Small Business Concern

(b) *Non-set-aside portion and award procedure*.

(1) A bidder which is not a labor surplus area concern or 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 labor surplus area concern or 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 Addendum to this Notice. Thus, the Notice Addendum is not to be used unless the bidder has bid the entire quantity of an item under the non-set-aside portion.

However, a labor surplus area or 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 labor surplus area or 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 labor surplus area or 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 separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities*. Negotiations for the set-aside portion will be conducted with eligible bidders in the following order of priority:
Group 1. Labor surplus area concerns which are also small business concerns.

Group 2. Other labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations for each item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bids. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity*. The quantity of the set-aside portion of an item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum 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.

(B) 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 Notice Addendum 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 Notice Addendum, less the quantity, if any, of that item awarded to that concern under the non-set-aside portion.

(4) *Price*. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on separate quantities at tie-in prices.

(5) *Separate quantities at different prices*. Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent 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 negotiations for the set-aside portion of that item.

(6) *Separate quantities at tie-in prices*. Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c) (1) above, (ii) the priority status of the firm under (c) (2) above, and (iii) the highest unit price for awards under (c) (4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) Definitions

(1) A "labor surplus area" is a geographical area which at the time of award is—

(i) Classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of substantial labor surplus by a local State Employment Service Office at the request of any prospective contractor.

(2) A "labor surplus area concern" is a concern which (i) is located within a labor surplus area, and (ii) will perform any contract awarded to it as a labor surplus area concern substantially in labor surplus areas.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is not dominant in its field of operations and with its affiliates employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

Section 2.201(c) (19) has been added as follows to set forth an interim provision on late bids and withdrawals to be used pending revision of Standard Forms 30 and 33.

§ 2.201 Preparation of forms.

* * * * *

(c) Schedule.

* * * * *

(19) Pending revision of paragraphs 3 and 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Forms 30 and 33, include the following provision:

Late bids and withdrawals. Bids and modifications or withdrawals thereof received in the office designated in the Invitation after the exact time specified for opening

of the bids will not be considered, unless they are (1) submitted by mail or by telegram (if authorized) and received before award is made and (2) it is determined by the Government that late receipt was due solely to either (A) delay in the mails (or by the telegraph company, if telegraphic bids are authorized) for which the bidder was not responsible or (B) mishandling by the Government after the bid, modification of withdrawal is received at the Government installation.

Subpart C of this part has been rewritten to reflect agreement with respect to provisions of GSA General Regulation No. 22, dated February 2, 1959, which relates to the treatment of late bids, modifications, and withdrawals. Subpart C, as revised, reads as follows:

Subpart C—Submission of Bids

§ 2.301 Method of bid submission.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids or its accompanying papers.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are furnished to bidders with, or as a part of, the bid form that is used. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract the terms and conditions of which do not vary from the terms and conditions of the invitation.

§ 2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time specified for opening.

§ 2.303 Late bids.

§ 2.303-1 General.

Bids which are received in the office designated in the invitation for bids after the exact time specified for opening are "late bids," even though received only one or two minutes late. Late bids shall not be considered for award except as authorized in §§ 2.203-1 to 2.203-8.

§ 2.303-2 Consideration for award.

The contracting officer or his authorized representative shall determine whether late bids may be considered for award, in accordance with §§ 2.203-1 to 2.203-8. A late bid shall be considered for award only if it is received before award; and either:

(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 for which the bidder was not responsible, where the invitation specifically authorizes telegraphic bids; or

(b) It is determined that the bid, if submitted by mail or authorized tele-

gram, 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.

§ 2.303-3 Mailed bids.

(a) The time of mailing of late bids will be determined as follows:

(1) The date and hour shown in a post office cancellation stamp or in a stamp affixed by a metering device shall 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 date and hour shown by the cancellation stamp shall govern;

(3) If the envelope or other outer covering shows the date but not the hour of mailing, the time of mailing shall be considered to be the last minute of the date shown, except as stated in subparagraphs (5) and (6) of this paragraph;

(4) If the envelope or other covering does not show the date of mailing, the bid shall be presumed to have been mailed too late to be received in time, except as stated in subparagraphs (5) and (6) of this paragraph;

(5) Information regarding the date and hour of mailing of registered mail, when not ascertainable from the post office cancellation stamp, shall be obtained from the postal authorities indicated in (b) below;

(6) If the bidder demonstrates the date or hour of mailing by clear and convincing evidence which includes substantiation by the post office of mailing, the date or hour thus demonstrated shall be considered the time of mailing.

(b) Information concerning the normal time for mail delivery, and concerning registered mail, shall be obtained by the purchasing activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office serving that activity. When time permits, such information shall be obtained in writing.

§ 2.303-4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, 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 in the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered on time by normal transmission procedure, so as not to have been late.

§ 2.303-5 Hand-carried bids.

A late hand-carried bid shall not be considered for award.

§ 2.303-6 Notification.

Upon receipt of any late bid which is received before award, but which, on the basis of available information, cannot be considered for award under § 2.303-2(a), the contracting officer or his authorized representative shall promptly notify the

bidder that its 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, your bid will not be considered for award unless clear and convincing evidence is submitted promptly (and in any event before award) showing that late receipt was due solely to delay in the mails for which you were not responsible.

The foregoing notification may be appropriately modified in the case of late telegraphic bids.

§ 2.303-7 Disposition.

Late bids which are 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, except that an unidentified bid may be opened solely for purposes of identification as provided in § 2.401.

§ 2.303-8 Records.

The following shall, if available, be included in the purchasing office files with respect to each late bid:

(a) A statement of the date and hour of mailing, filing, or delivery, as the case may be;

(b) A statement of the date and hour of receipt;

(c) The determination of whether or not the late bid was considered, with supporting facts;

(d) A statement of the disposition of the late bid; and

(e) The envelope or other covering, if the late bid was considered for award.

§ 2.304 Modification or withdrawal of bids.

Bids may be modified or withdrawn by written or telegraphic notice received prior to the exact time specified for opening. In addition, a bid may be withdrawn in person by a bidder or his authorized representative: *Providing*, His identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time specified for bid opening.

§ 2.305 Late modifications and withdrawals.

(a) Modifications and requests for withdrawal which are received in the office designated in the invitation for bids after the exact time specified for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be considered as being effective only if it is received before award; and either:

(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 in telegraphic transmission for which the bidder was not responsible; 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 mis-

handling on the part of the Government at the installation, would have been received on time at the office designated;

Provided, however, A modification received from an otherwise successful bidder which is favorable to the Government and which would not be prejudicial to other bidders shall be considered at any time that such modification is received. In determining whether late modifications or withdrawals should be considered effective, the rules stated for late bids in §§ 2.303-3 to 2.303-5 shall apply.

(b) Upon receipt of any late modification or late withdrawal which is received before award, but which, on the basis of available information, cannot be considered effective under paragraph (a) (1) of this section, the contracting officer or his duly authorized representative shall promptly notify the bidder that its modification or request for withdrawal was received late. Such notification shall include substantially the following information:

The (modification) (request for withdrawal) of your bid dated _____, in response to Invitation for Bids No. _____, dated _____, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless clear and convincing evidence is submitted promptly (and in any event before award) showing that late receipt was due solely to delay in the mails for which the bidder was not responsible.

The foregoing notification may be appropriately modified in the case of late modifications or late withdrawals received by telegraph.

(c) Late modifications or late withdrawals, which are not considered as being effective, shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder, except that:

(1) An unidentified modification or request for withdrawal may be opened solely for purposes of identification, as provided in § 2.401; and

(2) Any modification received from an otherwise successful bidder shall be opened, so as to determine whether it should be considered as stated in the proviso in paragraph (a) of this section.

(d) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 2.303-8.

Subpart D—Opening of Bids and Award of Contract

Section 2.409 has been revised as follows:

§ 2.409 Advance payments.

Pursuant to the First War Powers Act and Executive Order No. 10210, provisions for advance payments may be made after award of contracts resulting from formal advertising. The provisions for advance payment shall comply with Defense Contract Financing Regulations, Part 32 of this chapter.

Subparts E and F have been deleted. The policies on Qualified Products (formerly Subpart E) are set forth in Part

1, Subpart K; Subpart F appears as § 1.317.

PART 3—PROCUREMENT BY NEGOTIATION

Subpart B—Solicitation of Bids

The revised portions of §§ 3.206-1, 3.206-2, and 3.213-2 read as follows:

§ 3.206 Purchases outside the United States.

§ 3.206-1 Authority.

Pursuant to 10 U.S.C. 2304(a) (6), purchases and contracts may be negotiated if "for property or services to be procured and used outside the United States, and its Territories, possessions and Puerto Rico."

§ 3.206-2 Application.

The authority of this § 3.206 shall be used only for the procurement of:

(a) Supplies to be (1) shipped from, (2) delivered, and (3) used, or

(b) Services to be performed outside of the United States, and its Territories, possessions and Puerto Rico, irrespective of the place of negotiation or execution of the contract. When the authority of this paragraph is available for the negotiation of a contract, no other negotiating authority shall be used.

§ 3.213-2 Application.

(a) The authority of §§ 3.213-1 to 3.213-3 may be used for procuring additional units and replacement items of specified makes and models of technical equipment and parts, which are for tactical use or for use either in Alaska, Hawaii or outside the remainder of the United States, in theaters of operations, on board naval vessels, or at advanced or detached bases; and which have been adopted as standard items of supply in accordance with procedures prescribed by each respective Department. A current or recurring procurement requirement for the item shall be present. This authority would apply, for example, whenever it is necessary:

Section 3.215-1 has been revised as follows:

§ 3.215-1 Authority.

Pursuant to 10 U.S.C. 2304(a) (15), purchases and contracts may be negotiated if—

For property or services for which he (the Secretary) determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier.

Part 7, subpart D, was issued as a portion of Revision No. 44 to this Subchapter (see 24 F.R. 4551). Subsequent to publication, it developed that certain clarification was needed before satisfactory implementation could be accomplished by the military departments.

The resultant changes are included herein in §§ 3.401, 3.807-5, 7.203-7, 7.203-10, 7.402-3, 7.402-7, 7.402-8, 8.213, 8.701 to 8.704, 8.706 and 9.106-1. The mandatory effective date for Part 7, Subpart D, was originally July 1, 1959; because of these changes, it has been deferred to December 1, 1959, although compliance is authorized upon receipt of this revision. This revised effective date similarly applies to the other changes listed above. These changed paragraphs appear in their proper sequence below:

Subpart D—Types of Contracts

§ 3.401 Types of contracts.

Pursuant to the authority of 10 U.S.C. 2306, contracts negotiated under this Part may be of any of the types or combination of types described herein, which will promote the best interests of the Government subject to the restrictions described below. 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.

Subpart H—Price Negotiation Policies and Techniques

Subpart H has been extensively revised and a new Subpart I, entitled "Subcontracting Policies and Procedures", has been added to Part 3. Additional coverage has been provided on "make or buy" decisions, subcontracting, and contractor's certification that cost data is current, accurate, and complete. Guidance in the area of profit or fee for subcontracted work has been included in § 3.808-2(h). The changed sections and new Subpart I appear below.

§ 3.804-2 Late proposals.

* * *

(b) * * *

(2) When it is determined by such other authority that it is in the best interest of the Government to consider the late proposal, the contracting officer shall, consistent with § 3.805-1(a) (2), resolicit all firms (including the late offeror) which have submitted proposals and have been determined to be capable of meeting requirements. Such resolicitation shall specify a date for submission of new or revised proposals. In appropriate cases, such as where further delay in making award will jeopardize meeting the Government's requirement, a resolicitation may provide that late proposals shall not be considered, notwithstanding the Government's reservation of a right to consider such proposals (as stated in the Late Proposals provision required by § 3.804-2(a)).

§ 3.805 Selection of offerors for negotiation and award.

§ 3.805-1 General.

(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. Modifications of proposals received after the submission of final prices shall be considered only under the circumstances set forth in § 3.804-2(b) (relating to late proposals).

(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 have 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 under § 3.109.

(c) Except where cost-reimbursement type contracts are to be used (see § 3.805-2), 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 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. Award of a contract may be properly influenced by the proposal which promises the greatest value to the Government in terms of possible performance, ultimate productibility, growth potential and other factors rather than the proposal offering the lowest price or probable cost and fixed fee.

(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 changed requirements.

§ 3.805-2 Cost-reimbursement type contracts.

In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (a) the lowest proposed cost, (b) the lowest proposed fee, or (c) the lowest total estimated cost plus proposed fee. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and regulation and appropriate to the work to be performed (see § 3.808). Beyond this however, the primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government.

§ 3.806 Cost profit and price relationships.

(a) Where 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 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 § 3.805-1(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, including those in § 3.101.

(b) Profit or fee is only one element of price 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 concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

§ 3.807 Pricing techniques.

§ 3.807-1 General.

Policies set forth in this subpart 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. They are equally applicable to initial and subsequent price negotiations.

§ 3.807-2 Pricing individual contracts.

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 neither prevents the negotiation of fixed overhead and other rates applicable to several contracts during annual or other specific periods nor prohibits forward pricing agreements applicable to several contracts.

§ 3.807-3 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. In the absence of effective price competition, the negotiating team must make a thorough analysis of contractors' proposals and must be in possession of current, complete, and correct cost or pricing data before decisions are made on contract prices. Accordingly, the contractor should be required to furnish such data promptly as it becomes available throughout the negotiation process. To assure that the negotiating team is in possession of such data, the certificate set forth in § 3.807-7 shall be obtained for each separate negotiation when the amount of the procurement action exceeds \$100,000, and the price negotiated is based more on the contractor's actual or estimated cost than on effective competition, established catalog or market

prices, or prices set by law or regulation. The certificate may be required when lesser amounts are involved in particular cases where the contracting officer considers that the circumstances warrant such action. The certificate shall be obtained from the prime contractor immediately prior to agreement on negotiated prices, targets, or price revisions. However, the requirement for a contractor's certificate of pricing is not to be considered a substitute for a thorough examination and analysis of the contractor's proposal by the negotiating team.

(b) One form of price analysis is the comparison of prior quotations and contracts 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 because it affords no opportunity for comparison with other products of the same kind.

§ 3.807-4 Cost analysis.

(a) The need for cost analysis depends on the effectiveness of the methods of price analysis outlined in § 3.807-3, 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 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 used 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 similar 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.

§ 3.807-5 Subcontracting.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large proportion 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 economic production. 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 these elements and their effect on prime contract prices. Therefore, contractors'

"make or buy" programs and proposed subcontracts should be reviewed in accordance with Subpart I of this Part and the information from such review should be used in negotiating prime contract prices. Even though not specifically required by Subpart I, the contracting officer should, where appropriate, elicit from the offeror or contractor information concerning:

(1) The purchasing practices of the prime contractor;

(2) The principal components to be subcontracted and the contemplated subcontractors, including (i) the degree of competition obtained, (ii) cost or price analyses or price comparisons accomplished, including current, complete and correct cost or pricing data, and (iii) the extent of subcontract supervision;

(3) The types of subcontracts; i.e., firm fixed-price or other (see § 3.401); and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

In connection with subparagraph (2) (ii) of this paragraph, the contracting officer shall, in the case of subcontracts which meet the criteria of § 3.807-3(a), require the prime contractor to obtain from first-tier subcontractors a certificate as set forth in § 3.807-7, modified to reflect that it is a certification to the prime contractor rather than to the Government. The prime contractor shall be required to furnish such certificate to the contracting officer.

(b) Where subcontracts are placed on a price redetermination or 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. Also, contracting officers should be alert to the risk of establishing firm redetermined prime contract prices while a major subcontract is still subject to price redetermination and may eventually be redetermined at a price far lower than that ascribed to it in redetermining the prime contract price, with consequent profits to the contractor far in excess of those contemplated in the prime contract price negotiation. However, in some cases, it may be appropriate to negotiate firm prime contract prices even though the contractor has not yet established final subcontract prices, if the contracting officer can justify as reasonable the amount included for subcontracting, e.g., where fairly definite cost data on subcontract prices are available. In other cases, where certain subcontracts are subject to redetermination and available cost data on these subcontracts are highly indefinite but other circumstances require prompt negotiation of revised prime contract prices, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed

below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

[List Subcontracts]

(c) In negotiating prime contracts where the award is not determined by price competition and in consenting to cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed—

(1) Ten percent (10%) of the estimated cost, exclusive of fee, in the case of any subcontract for experimental, developmental, or research work; or

(2) Seven percent (7%) of the estimated cost, exclusive of fee, in the case of any other subcontract;

unless the payment of higher fees is approved by the Secretary concerned or his designees. These limits should not be inserted in the prime contract because such action might tend to inflate fees customarily negotiated at lower rates.

§ 3.807-6 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. When a contractor whose product is required because of its proprietary character or whose technical assistance is essential declines to negotiate a profit or fee in accordance with the considerations and factors set forth in § 3.808-1 or § 3.808-2, or demands a profit or fee which the contracting officer considers to be unreasonable in relation to the supplies to be furnished or services or work to be performed, the procuring activity concerned should attempt to develop an alternate source of supply.

§ 3.807-7 Certificate of current pricing data.

Where a certificate of current cost or pricing data is required in accordance with § 3.807-3(a), it shall be in the form set forth below and shall be included in the contract file along with the memorandum of the contract negotiation.

This is to certify, to the best of my knowledge and belief, that in the prepara-

tion of the proposal for _____ being (to be) produced under the terms of (contract, proposal, quotation, etc.) No. _____: (i) all available actual or estimated costs or pricing data have been considered in preparing the price estimate, and made known to the Contracting Officer for his use in evaluating the estimate, and (ii) any significant changes in the above data which have occurred since the preparation of the above proposal through the _____ of _____ (Date)

_____ also have been made (Month) (Year) known in the price negotiations to the Government negotiator.

Name _____
Title _____
Firm _____

Date _____

Note that 18 U.S.C. 1001 prescribes criminal penalties for making false representations to the Government.

§ 3.807-8 Unacceptable substitutes for pricing negotiations.

Contracting officers shall not rely primarily (i) on the contractor's certificate as to the reliability of current data used in negotiations where effective competition is not obtained, nor (ii) on profit limiting statutes as remedies for ineffective pricing. Such statutes generally provide for the recapture of excessive profits.

§ 3.808 Profit or fee.

§ 3.808-1 General.

A fair and reasonable provision for profit or fee cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. Rather, the profit or fee should be first established as a dollar amount, after considering the factors set forth in this section. Therefore, where a fee is involved and it is necessary to determine the percentage relationship between the fee and the estimated cost of the contract in order to comply with administrative and statutory limitations on fees for cost-reimbursement type contracts, the percentage shall be determined only after the dollar amount of the fee has been established for negotiation purposes.

§ 3.808-2 Factors for determining fee or profit.

The factors set forth in subparagraphs (a) through (i) below should be considered in determining profit or fee in all contracts, whether for supplies or services; for construction work; or for experimental, developmental, or research work; and whether of the fixed-price type or of the cost-reimbursement type unless otherwise specified in the particular factor. All of the following factors, as set forth in paragraphs (a) through (i) of this section should be evaluated in the light of the basic policy set forth in § 3.801-1 which provides that supplies and services shall be procured from responsible sources at fair and reasonable prices calculated to result in the lowest overall cost to the Government:

(a) *Effect of competition.* 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.

Where effective competition is lacking, the estimate for profit for the proposed fixed fee should be analyzed in the same manner as all other elements of price, applying the factors set forth in this section.

(b) *Degree of risk.* (1) The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all risk.

(2) Some cost-plus-a-fixed-fee contracts and task orders for research and development call for the delivery of prototypes of other "hardware." Other such contracts or task orders require only that the contractor exert its "best efforts" to deliver the required end item. Frequently this is because the contractor is not willing to assume the additional burden of incurring substantial cost overruns without additional fee in order to complete performance. When the contract calls for delivery of developed models in accordance with well-defined performance or design characteristics or a predetermined delivery schedule, or both, in contrast to an obligation only to exert its "best efforts" to develop and deliver such models, payment of the fee should be conditioned on performance in accordance with the contractor's obligation to deliver, and in such cases the contractor may be entitled to a larger fee both because of the risk inherent in its commitment and because of the successful completion of the work.

(c) *Nature of work to be performed.* A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment, whether the caliber or class of engineer involved is that of an "idea-man," or whether the contractor is to be required by the contract to assign to the work unusually skilled talent.

(d) *Extent of government assistance.* The Department of Defense encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, 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 or fee. (See also § 3.404-3(d).)

(e) *Extent of the contractor's investment.* The extent of a contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profit.

(f) *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 each 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.

(g) *Contractor's performance.* In addition to the factors set forth in § 3.101, the contractor's past and present 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 cost incurred), meeting delivery schedules, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), engineering (including inventive contributions), management of subcontract programs, and any unusual services furnished by the contractor. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(h) *Subcontracting.* In negotiating the profit or fee, the nature and extent of any subcontracting should be considered, particularly as it bears on the contractor's performance, administrative responsibility, financial investment, and degree of risk as outlined above. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define precisely the exact profit or fee treatment to be accorded each situation, the general guidelines which follow will be taken into consideration. The evaluation of a contractor's subcontracting program should not consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting need not make for negotiation of a lesser profit or fee—the character and circumstances of the subcontracting and the effect on the prime contractor's costs must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit is computed, instances may arise in which a significant portion or portions of a contract are subcontracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such a case, the amount of fee or profit should be less than where the contractor assumes substantial risk. Of primary importance is the degree to which the subcontracting provides a better product and lower costs, with timely delivery, and in which the contractor assumes

heavy managerial effort, responsibility and risk. In this connection, consideration should be given to the contractor's past and present effectiveness in offering to qualified small business concerns and to firms in labor surplus areas an opportunity to compete for subcontracts (see for example, § 1.707-3) and to the contractor's furnishing assistance to such concerns as they require or as the Government may specifically request. A contractor's effectiveness in furnishing such opportunity or assistance to an unusual or exceptional degree, should be given favorable consideration in determining the amount of fee or profit.

(i) *Unrealistic estimates.* If records reveal that a contractor's actual costs are consistently lower than his estimated costs (indicating a practice of excessive estimates), and if the contractor refuses to provide what seems to be reasonable estimate of costs, a lower profit or fee should be considered.

§ 3.303-3 Incentive profit or fee.

See §§ 3.403-4, 3.404-4 and 3.406.

§ 3.303-4 Minimal fees or cost sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis.

§ 3.303-5 Fee limitation for experimental, developmental, or research work.

In connection with the administrative and statutory limitations on fees set forth in § 3.404-3(c), the existence of the administrative limitation of 10 percent for research and development work should not prevent the negotiation of fees, either fixed or incentive, up to the level of the statutory limitation of 15 percent in the appropriate circumstance. Such cases, however, shall be fully documented through factual support including specific details of prior experience with the contractor, the complexity of the work to be performed, and the details in connection with all of the above factors. Contractors proposing such fees should be required to support their proposals in a similar manner. These requirements apply not only to fixed fees but to incentive fees as well which in their final evaluation can exceed the administrative limitation.

Subpart I—Subcontracting Policies and Procedures

§ 3.900 Scope of subpart.

This subpart sets forth policies and procedures for the evaluation, review, and approval of contractors' "make or buy" programs, purchasing systems, and proposed subcontracts.

§ 3.901 General.

(a) Information as to the contractor's "make or buy" program, purchasing system, and proposed subcontracts may be important to (1) negotiation of reasonable contract prices (see §§ 3.807-5 and

3.808-2(h)), (2) assurance of satisfactory contract performance, or (3) carrying out Government policies regarding small business (§ 1.707-1), labor surplus areas (§ 1.805-1), use of Government facilities, maintenance of mobilization base, or other policies which may be appropriate to the particular procurement. Therefore, Government review of contractors' "make or buy" programs and proposed subcontracts is required as set forth in this subpart. Where make or buy decisions and subcontracting will have a substantial impact on price negotiation or contract performance or administration, the contractor's "make or buy" program and subcontracting should be evaluated and agreed on during negotiations, to the extent practicable.

(b) Review of the contractor's purchasing system, principal proposed subcontracts and "make or buy" program should generally be made where (1) the item, system, or work is complex, the dollar value is substantial, or competition is restricted; and (2) cost reimbursement, price redetermination, or incentive-type contracts are to be used.

§ 3.902 Review of "Make or Buy" program.

(a) A "make or buy" program is that part of a contractor's written plan for the production of an end item which outlines the major components, assemblies, subassemblies, and parts to be manufactured (including testing, treating, and assembling) in its own facilities and those which will be obtained elsewhere by subcontract.

(b) Where the nature of the procurement is such that, in view of the factors in § 3.901(b) above, review of the "make or buy" program is appropriate or is otherwise considered essential, the prospective contractor shall be required to submit its proposed "make or buy" program, together with sufficient data to permit the contracting officer to evaluate such factors in paragraph (c) of this section as are pertinent.

(c) In reviewing the "make or buy" program during negotiation, consideration shall be given to the following factors in the light of how they affect the interests of the Government:

(1) The effect of the contractor's plan to make or buy, as the case may be, on price, quality, delivery, and performance;

(2) Whether the contractor plans to broaden its base of subcontractors through competitive means;

(3) Whether the contractor has given consideration to competence, abilities, experience, and capacities available within other firms;

(4) Whether small business concerns are given an equitable opportunity to compete for subcontracts;

(5) Whether the contractor or major subcontractors propose to do work in plant, the nature of which differs significantly from their normal in-plant operations or for which they are not historically suited;

(6) Whether production of the item or performance of the work will create a requirement, either directly or indirectly, for additional facilities to be fur-

nished by the Government, by the contractor, or by subcontractors;

(7) Whether the contractor proposes to use additional Government-furnished facilities to do a type of work in plant for which there is capacity elsewhere (not requiring Government facilities) which is competitive in quality, delivery, and overall cost, and is acceptable as a source to the contractor; and

(8) Other factors, such as the nature of the item, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and material.

After agreement on the program is reached, the contracting officer shall notify the contractor as to the Government's approval of the program and shall inform the contractor as to any requirement for further review during performance of the contract.

(d) In contracts resulting from negotiation in which a "make or buy" review has been made and agreement reached thereon pursuant to paragraph (c) of this section, there generally should be included a requirement for notification to the Government in advance of any proposed change to the "make or buy" program together with justification therefor, or a requirement for a periodic review of the contractor's "make or buy" program to assure that any changes are consistent with the best interests of the Government.

(e) Approval of the contractor's purchasing system (§ 3.903) shall not be construed as approval of the "make or buy" program where such is required.

§ 3.903 Review of subcontracting and contractors' purchasing systems.

Examination of the contractor's purchasing system and plans for subcontracting, review of proposed subcontract sources and prices in the light of the factors indicated in § 3.901, and discussions with contractor to bring about any adjustments which may be needed to clear the way for formal subcontract approval, should generally be accomplished as part of the negotiation of the prime contract. Any resulting purchasing system approvals may be granted before the contract is executed.

§ 3.903-1 Contract clauses.

(a) The prescribed clauses, covering Government consent to subcontracts, for cost-reimbursement type contracts are set out in §§ 7.203-8 and 7.402-8. Except where definite and final evaluation of the contractor's subcontracting is accomplished during negotiations, the following clause (unless modified in accordance with paragraphs (b), (c), or (d) of this section) shall be included in all fixed-price incentive and fixed-price redeterminable contracts where—

(1) It is anticipated that one or more subcontracts may each exceed \$100,000 or such other figure as is to be included in (b)(ii) and (iii) of the following clause in accordance with paragraph (c) of this section;

(2) The work of the prime contractor, or of the plant or division of the prime contractor which will perform the con-

tract, is predominantly for the Government; or

(3) The estimated contract price is \$1,000,000 or more.

SUBCONTRACTS

(a) As used in this clause, the term "subcontract" includes purchase orders.

(b) Except as provided in paragraph (d) below, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which—

(i) Is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or

(ii) Is proposed to exceed \$100,000; or

(iii) Is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed \$100,000.

(c) The advance notification required by paragraph (b) above shall include:

(i) A description of the supplies or services to be called for by the subcontract;

(ii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(iii) The proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete, and correct cost or pricing data, accompanied by a certificate from the subcontractor, in such form as the Contracting Officer may prescribe, to the effect that all cost or pricing data has been considered by the subcontractor in preparing its proposal and that such data is current, and has been provided the Contractor; and

(iv) Identification of the type of contract proposed to be used.

(d) Advance notifications of subcontracts, as required by paragraph (b) above, are not required for any subcontract (i) not on a cost-plus-a-fee, time and material, or labor-hour basis, if the Contracting Officer has in writing approved the Contractor's purchasing system and the subcontract is within the limitations of such approval, or (ii) consented to in writing by the Contracting Officer as a proposed subcontract prior to the execution of this contract.

(e) The Contractor shall not, without the prior written consent of the Contracting Officer, enter into any subcontract for which advance notification to the Contracting Officer is required by this clause; provided that, in his discretion, the Contracting Officer may ratify in writing any subcontract and such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(f) No consent by the Contracting Officer to any subcontract or any provisions thereof or approval of the contractor's purchasing system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

(g) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(h) The clause set forth in paragraph (a) of this section may be appropriately modified so as not to require advance notification of, or consent to, any subcontracts which have been definitely and finally evaluated during negotiations. In this respect, the clause may limit advance notifications thereunder to one or more particular subcontracts or classes

of subcontracts, or may, in individual cases, be tailored to unusual or particular circumstances.

(c) In paragraph (b) (ii) and (iii) of the clause set forth in paragraph (a) of this section, a lower dollar amount may be inserted in lieu of \$100,000 where it is determined that closer surveillance of subcontracting is desirable because of the character of the industry involved, the critical nature of work which will probably be subcontracted, the absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or the novelty of the supplies or services being procured. A higher dollar amount than \$100,000 may be inserted in paragraph (b) (ii) and (iii) of the clause when the insertion of the higher amount is approved at a level higher than that of the contracting officer, as prescribed by the Department concerned.

(d) The certificate prescribed by paragraph (c) (iii) of the clause shall be in the form set forth in § 3.807-7 appropriately modified to reflect that it is a certificate to the prime contractor, rather than to the Government.

§ 3.903-2 Consent to subcontracts.

(a) The contracting officer's consent to subcontracts required by the clause set forth in § 3.903-1 (for fixed-price redeterminable or fixed-price incentive contracts) or the clause set forth in §§ 7.203-8 or 7.402-8 (for cost-reimbursement type contracts) shall be accorded by individual consent on subcontract-by-subcontract basis. However, where the contracting officer has approved the contractor's purchasing system, in whole or in part, such consent is not required for subcontracts within the scope of such approval, except as to cost-reimbursement type, time and materials, or labor-hour subcontracts, and in the case of cost-reimbursement type prime contracts, subcontracts, which provide for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities.

(b) The purposes of subcontract consent requirements are usually best served if review and analysis of the contractor's purchasing system and of its proposed subcontracts are carried out in conjunction with negotiation of the prime contract (and concurrently with any review of the contractor's "make or buy" program as required by § 3.902). Although consent to subcontracts cannot always be formally accomplished prior to execution of the prime contract (since definitive subcontracts are not generally entered into until after execution of the prime), the review, analysis, and discussion leading up to such formal consents should, where feasible, be conducted during the negotiation process.

§ 3.903-3 Approval of purchasing system.

(a) Approval of a contractor's purchasing system should be granted only after a survey which includes review of such factors as:

(1) The degree of competition obtained by the contractor's purchasing methods;

(2) The contractor's pricing policies and techniques, when necessary, including its methods of obtaining current, complete and accurate cost and pricing data;

(3) The contractor's method of evaluating subcontractors' responsibility (§ 1.906);

(4) The extent to which the purchasing system is consistent with any contract requirements covering small business and labor surplus area concerns; and

(5) The treatment accorded affiliates of the contractor or other concerns having close working arrangements with the contractor.

(b) Approval of a contractor's purchasing system may be unqualified or may be limited. For example, the purchasing system may be approved except for subcontracts in excess of a stated amount or except for subcontracts for stated work which is of such critical nature that extraordinary Government surveillance is called for. Where the approval is limited by reason of deficiencies in the purchasing system, the contractor shall be notified of such deficiencies and requested to correct them. In no case shall approval of the contractor's purchasing system waive the requirement for individual consent to cost-reimbursement, time and materials, or labor-hour subcontracts. In the case of cost-reimbursement type prime contracts, in addition to the foregoing, approval of the contractor's purchasing system shall not waive the requirements for individual consent to subcontracts which provide for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities.

(c) Upon approval of the contractor's purchasing system (whether unqualified or limited), the contracting officer shall give the contractor written notice thereof. The notice shall set forth any limitations on the approval and shall state that the approval does not (1) relieve the prime contractor of any of its obligations under any contract, (2) restrict the Government from subsequently withdrawing the approval in whole or in part, or (3) cover any unapproved material changes which the contractor may make in its purchasing system.

(d) After approval of the contractor's purchasing system, periodic examination of the contractor's operations under such system shall be made to determine whether any substantial changes in procedures, initiated by the contractor or as a result of recommendations by the Government, have occurred, as well as to evaluate the contractor's performance under the purchasing system.

§ 3.903-4 Review of individual subcontracts.

(a) In reviewing or consenting to individual subcontracts, the contracting officer should give appropriate consideration to the following:

(1) Whether the decision to enter into the proposed subcontract is consistent with the contractor's approved "make or buy" program, if any (see § 3.902);

(2) Whether the proposed subcontract will require the use of Government furnished facilities;

(3) The responsibility of the proposed subcontractor (§ 1.906);

(4) Basis for selecting proposed subcontractor, including the degree of competition obtained;

(5) Cost or price analysis or price comparisons accomplished, with particular attention to whether cost or pricing data are current, complete, and correct (see § 3.903-1(d));

(6) Extent of subcontract supervision;

(7) Types of contracts used (Subpart D of this part); and

(8) Estimated total extent of subcontracting, including procurement of parts and materials.

(b) In reviewing subcontracts, careful and thorough evaluation is particularly necessary when:

(1) The prime contractor's purchasing 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;

(3) Close working arrangements or 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 cost-reimbursement, time and material, labor-hour, fixed-price incentive, or fixed-price redeterminable basis.

Where subcontracts have been placed on a cost-reimbursement, time and materials, or labor-hour 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 § 3.803(b).

§ 3.904 Additional contract clauses.

Additional contract clauses with respect to subcontracting with Small Business and Labor Surplus Area concerns are set forth in Part 7 of this subchapter.

PART 4—COORDINATED PROCUREMENT

Subpart B—Policies and General Principles

§ 4.201 Application of procurement assignment.

Single procurement in the form of single department, joint agency, or plant cognizance procurement shall be effected whenever it will result in net advantages to the Department of Defense as a whole, except so far as it can be demonstrated that use of such a procurement method will adversely affect military operations. Single department procurement assignments in Alaska, Hawaii, and outside the remainder of the United States, regardless of funds utilized, will be determined

by the respective Unified Commanders. Implementation of such assignments will be effected within the unified commands under the direction of the Unified Commander.

PART 6—FOREIGN PURCHASES

Subpart A—Buy American Act—Supply and Service Contracts

§ 6.101 Definitions.

(c) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any other areas subject to the complete sovereignty of the United States.

Section 6.104-3 has been revised to delete the separate signature block on the Buy American Certificate. The certificate is included in a bid or proposal which is also signed, thus the dual signature requirement, which previously existed, has been eliminated. Section 6.104-3, as revised, reads as follows:

§ 6.104 Procedures.

§ 6.104-3 Certificate.

Invitations for Bids and Requests for Proposals shall require that each bid or proposal include a certificate substantially as follows:

BUY AMERICAN CERTIFICATE

The bidder or offeror hereby certifies that each end product, except the end products excluded below, is a domestic source end product (as defined in the contract clause entitled Buy American Act); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded items: -----

In accordance with a suggestion from the Department of Interior, and based on Determinations and Findings approved by the Materiel Secretaries, "mercury" has been deleted from the lists of excepted articles, materials, and supplies appearing in §§ 6.105 and 6.206, as follows:

§ 6.105 List of excepted articles, materials, and supplies.

Pursuant to the Buy American Act and §§ 6.103-2 and 6.103-3, the Secretaries have determined that the articles, materials, and supplies listed below may be acquired for public use without regard to country of origin, except as provided in Subpart D of this part. Additional determinations pursuant to 6.103-2 covering individual procurements may be made in accordance with Departmental procedures.

List of Excepted Articles, Materials, and Supplies

Acetylene, black.
Agar, bulk.
Antimony, as metal or oxide.
Asbestos, amosite.
Bananas.
Beef extract.
Bismuth.
Books, trade, text, technical or scientific; newspapers; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

Brazil nuts.
 Cadmium, ores and flue dust.
 Calcium cyanamide.
 Capers.
 Cashew nuts.
 Castor beans.
 Chalk, English.
 Chicle.
 Chrome ore or chromite.
 Cinchona bark.
 Cobalt, in cathodes, rondelles, or other primary forms.
 Cocoa beans.
 Coconut and coconut meat in shredded, desiccated or similarly prepared form.
 Coffee, raw or green bean.
 Copra.
 Cork, wood or bark and waste.
 Damar gum.
 Diamonds, industrial.
 Emetine, bulk.
 Ergot, crude.
 Fiber, coir, abaca, and agave.
 Goat and kid skins.
 Graphite, natural, crystalline, crucible grade.
 Hog bristles for brushes.
 Hyoscine, bulk.
 Iodine, crude.
 Ipecac, root.
 Jute and jute burlaps.
 Kaurigum.
 Lac.
 Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
 Menthol, natural, bulk.
 Mica.
 Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
 Nitroguanidine (also known as picrite).
 Nux vomica, crude.
 Oiticica oil.
 Olive oil.
 Olives, green; plain (unpitted) and stuffed, bulk.
 Opium, crude.
 *Petroleum, crude oil; petroleum, finished products; and petroleum, unfinished oils.

*Petroleum definitions, as used in this Subpart. (a) Crude oil means crude petroleum as it is produced at the wellhead; (b) Finished products means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means: (i) Liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures; (ii) Gasoline—a refined petroleum distillate which by its composition, is suitable for use as a carburant in internal combustion engines; (iii) Jet fuel—a refined petroleum distillate used to fuel jet propulsion engines; (iv) Naphtha—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes; (v) Fuel oil—a liquid or liquefied petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues; (vi) Lubricating oil—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces; (vii) Residual fuel oil—a topped crude oil or viscous residuum which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification MIL-F-859 for Navy Special Fuel Oil

Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
 Pyrethrum flowers.
 Quartz crystals.
 Quebracho.
 Quinidine.
 Radium salts.
 Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Shellac.
 Silk, unmanufactured.
 Sperm oil.
 Spices and herbs.
 Tale, block, steatite.
 Tapioca, tapioca flour and cassava.
 Tartar, crude, tartaric acid and cream of tartar.
 Tea.
 Tin, in bars, blocks, and pigs.
 Vanilla beans.
 Wax, carnauba.

Subpart E—Buy American Act—Construction Contracts

§ 6.201-4 United States.

United States means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any other areas subject to the complete sovereignty of the United States.

§ 6.206 List of excepted articles, materials, and supplies.

Pursuant to the Buy American Act and § 6.203-1, the Secretaries have determined that the articles, materials, and supplies listed below may be used in construction without regard to country of origin, except as provided in Subpart D of this part. Additional determinations pursuant to § 6.203 covering individual contracts for construction may be made in accordance with Departmental procedures.

Antimony, as metal or oxide.
 Asbestos, amosite.
 Bismuth.
 Cadmium, ores and flue dust.
 Chalk, English.
 Chrome ore or chromite.
 Cobalt, in cathodes, rondelles, or other primary forms.
 Cork, wood or bark and waste.
 Damar gum.
 Graphite, natural, crystalline, crucible grade.
 Jute and jute burlaps.
 Kaurigum.
 Lac.
 Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
 Mica.
 Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
 Rubber, crude and latex.
 Shellac.
 Tin, in bars, blocks, and pigs.

and any other more viscous fuel oil, such as No. 5 or Bunker C;

(viii) 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.

(c) Unfinished oils means one or more of the petroleum oils listed in (b) above, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

Section 6.303(e) has been revised as follows:

§ 6.303 Exceptions.

(e) Emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto.

Subpart D—Purchases From Soviet-Controlled Areas

Sections 6.401 and 6.402 have been revised to insure that national policy with respect to purchases of Soviet supplies is observed, and to set forth a procedure to obtain certain exceptions from the Secretary of the Treasury. The revised portions of §§ 6.401 and 6.402 read as follows:

§ 6.401-3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, or (b) the supplies are acquired directly from the countries indicated:

§ 6.401-4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 6.401-2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico:

§ 6.401-5 Supplies from North Korea or China.

All supplies, however processed, which are or were located in or transported from or through North Korea or China (as described in § 6.401-2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico.

§ 6.402 Exceptions.

(a) Exceptions from the general policy will be made only pursuant to paragraphs (b) and (c) of this section. Such exceptions shall be made only in unusual situations, for example, in cases of emergency or where supplies are not available from any other source and a substitute supply is not acceptable.

(b) Supplies, other than those whose procurement is prohibited by § 6.401-3,

§ 6.401-4 or § 6.401-5, originating from sources within Soviet-controlled areas (see § 6.401-2) may be procured only when:

- (1) The purchase is for \$2,500 or less and the contracting officer determines there is need for an exception in accordance with Departmental procedures; or
- (2) The purchase is for more than \$2,500 and an exception is approved by the Secretary of the Department concerned.

Before granting an exception under (2) above, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs): *Provided*, That such advice is not required in the case of emergency purchases or where supplies are not available from any other source and substitute supplies are not acceptable.

(c) Supplies whose procurement is prohibited by §§ 6.401-3, 6.401-4, or § 6.401-5, may be acquired if the acquisition is approved by an authorized Treasury Department representative. Where a request for such approval has been denied by the Treasury Department representative, an appeal may be made to the Secretary of the Treasury. Such appeals, with all pertinent information, shall be submitted through Departmental channels to the Assistant Secretary of Defense (International Security Affairs), for further transmission to the Secretary of the Treasury.

Subpart F—Duty and Customs

§ 6.602-5 Limitations.

Subject to the considerations set forth in §§ 6.602-4 and 6.605, a duty-free entry certificate may be issued in accordance with Departmental procedures when an "emergency purchase of war material" is made under the following circumstances:

* * * * *

Section 6.605 has been added to set forth the policy relating to the duty-free entry of listed Canadian supplies. Also included is a Duty-Free Entry Clause and conditions for its use. New § 6.605 reads as follows:

§ 6.605 Duty-free entry of listed Canadian supplies.

§ 6.605-1 Policy.

In keeping with the policy to enhance economic cooperation with Canada in the interests of continental defense (§ 6.504), duty-free entry should generally be accorded Canadian supplies which constitute, or which are to be directly or indirectly incorporated in, end items included in the Departmental lists of supplies maintained pursuant to § 6.103-5(a). (These Departmental lists include supplies of a military character or which are involved in programs of mutual interest to the United States and Canada.) Duty-free entry should be accorded such supplies by the issuance of duty-free entry certificates, consistent with § 6.602, in accordance with this § 6.605 and, in particular, as provided in the contract clause prescribed in § 6.605-2. Duty-free entry certificates should be issued only to the extent that the contract price excludes duty which

would be paid if such certificates were not issued.

§ 6.605-2 Contract clause.

Contracts which include the procurement of end items contained in the list maintained by the Department concerned in accordance with § 6.103-5(a) shall include the following clause if it is anticipated that duty on shipments from Canada into the United States may exceed \$50.

DUTY-FREE ENTRY—CANADIAN SUPPLIES

(a) Except as otherwise approved by the Contracting Officer and except with respect to individual shipments on which the duty is \$50 or less, the Contractor warrants that the contract price is* exclusive of duty with respect to:

(i) All end items which constitute "Canadian end products" (as defined in paragraph 6-101 of the Armed Services Procurement Regulation) to be delivered under this contract; and

(ii) All supplies (including, without limitation, raw materials, components and intermediate assemblies) produced or made in Canada which are to be incorporated in the end items to be delivered under this contract *provided*, that such end items are made in the United States or Canada,

except supplies imported into the United States prior to the date of this contract, or, in the case of supplies imported by a first- or lower-tier subcontractor hereunder, prior to the date of its subcontract.

(b) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the notation "United States [insert name of Military Department]—Duty Free Entry to be Claimed under 10 U.S.C. 2383. Collector of Customs kindly notify [insert name and address of Government official and office] upon arrival of shipment at port of entry."

(c) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, are not delivered to the Government or incorporated in such end items or disposed of pursuant to the provisions of this contract.

(d) The Government agrees to execute a duty-free entry certificate and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which (1) the contract price is¹ exclusive of duty pursuant to paragraph (a) above and (ii) the shipping documents bear the notation specified in paragraph (b) above.

(e) The Contractor agrees to insert in all subcontracts hereunder the substance of this clause, including this paragraph (e).

If the procurement covers both listed and unlisted end items, the foregoing clause should be modified so as to limit its application to the listed end items.

§ 6.605-3 Amending existing contracts.

Any contract for end items which are (a) included in the list of the Depart-

*In cost-reimbursement type contracts delete the words "the contract price is" and substitute therefor the words "the estimated cost is, and invoices or vouchers submitted under this contract shall be."

¹In cost-reimbursement type contracts delete the words "the contract price is" and substitute therefor the words "the estimated cost is, and invoices or vouchers submitted under this contract shall be."

ment concerned maintained pursuant to § 6.103-5(a) and are (b) to be made in the United States or Canada, may be amended consistent with the clause in § 6.605-2 to provide for the duty-free entry of Canadian supplies to be incorporated in such end items: *Provided*, In the case of a fixed-price type contract, the contract price is reduced by the amount of the duty. Under any cost-reimbursement type contract for such end items, duty-free entry shall be accorded such supplies to the extent permitted by § 6.602 except with respect to individual shipments on which the duty is \$50 or less.

PART 7—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

Section 7.103-13 has been revised to provide that the Renegotiation Clause required by section 104 of the Renegotiation Act of 1951 shall not be inserted in fixed-price and cost-reimbursement type prime contracts and subcontracts with foreign governments or individuals which are exempt from the provisions of the Act. An alternate clause for use in these situations has been provided and appropriate cross-references appear in §§ 7.203-13, 7.302-12, and 7.402-12.

Section 7.103-13, as revised, reads as follows:

§ 7.103-13 Renegotiation.

(a) Except as provided in paragraph (b) of this section, insert the following clause:

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of Contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

(b) A Renegotiation clause is not required in contracts with foreign governments or agencies thereof. Except in such contracts, the clause set forth below should be inserted, in lieu of the clause in paragraph (a) of this section, in contracts which are to be wholly performed outside the United States by a contractor which is not engaged in a trade or business in the United States and is:

(1) An individual who is not a national of the United States;

(2) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not domestic corporations are entitled to more than 50 percent of the profits; or

(3) A corporation (other than a domestic corporation) more than 50 per-

cent of the voting stock of which is owned directly or indirectly by persons described in subparagraph (1) and (2) of this paragraph:

RENEGOTIATION

(a) This contract has been determined to be exempt from the provisions of the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, since it is intended to be wholly performed outside the United States and the Contractor is not engaged in a trade or business in the United States and is—

(i) An individual who is not a national of the United States;

(ii) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not domestic corporations are entitled to more than 50 percent of the profits; or

(iii) A corporation (other than a domestic corporation) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in (i) and (ii) above.

(b) This contract shall cease to be exempt from the Renegotiation Act of 1951, as amended, if all of the requirements for exemption set forth in paragraph (a) above are not met at all times during the performance of this contract. If the Contractor does not meet all of these requirements during the entire performance of this contract, this contract shall be subjected to the Renegotiation Act of 1951, as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts, *Provided, however*, That nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. In the event this contract becomes subject to the Renegotiation Act of 1951, it shall be deemed to contain all the provisions required by Section 104 of that Act, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended, which meet the requirements for exemption from the Renegotiation Act of 1951 set forth in paragraph (a) hereof. The Contractor agrees to insert the following clause in all subcontracts which do not meet the requirements set forth in paragraph (a):

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

Section 7.104-22 has been amended as follows:

§ 7.104-22 Subcontracts.

In accordance with the requirements of § 3.903-1, insert an appropriate subcontracts clause.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

The revised portion of the records clause in § 7.203-7 reads as follows:

§ 7.203-7 Records.

(a) Except as provided in (b) of this section and in § 6.701, insert the following clause:

RECORDS

(a) * * *

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records (1) for a period of three years from the date of the voucher or invoice submitted by the Contractor after the completion of the work under this contract and designated by the Contractor as the "completion voucher" or "completion invoice," and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of the final settlement agreement or determination.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4)(B) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their 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 paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

In the foregoing clause, insert, in contracts of the Department of the Army,

and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the words "the Comptroller of the Navy (Contract Audit Division)," in the space designated by an asterisk (*****).

(b) In the case of contracts which establish separate periods of performance, the following alternate subparagraph

(a)(4) may be substituted for the corresponding subparagraph of the clause prescribed by paragraph (a) of this section.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records (i) for a period of three years from the date of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A), (B), or (C) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement agreement or determination.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(C) If the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," it shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which it plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time.

In the case of such contracts which do not contain the foregoing alternate subparagraph (a)(4), that subparagraph may be inserted by amendment, or in the alternative, the retention of records may be administered in accordance with the procedures set forth in the foregoing alternate subparagraph (a)(4).

A new paragraph (f) has been added to the clause in § 7.203-8, as follows:

§ 7.203-8 Subcontracts.

(f) Notwithstanding (b) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (b) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (b) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and in (i) and (iv) thereof dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures.

Section 7.203-10 has been revised as follows:

§ 7.203-10 Termination.

Insert the contract clause set forth in § 8.702.

Section 7.203-13 has been revised as follows:

§ 7.203-13 Renegotiation.

In accordance with the requirements of § 7.103-13, insert the appropriate contract clause set forth therein.

Section 7.203-18 has been revised as follows:

§ 7.203-18 Nondiscrimination in employment.

Insert the contract clause set forth in § 12.802.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

§ 7.302-12 Renegotiation.

In accordance with the requirements of § 7.103-13, insert the appropriate contract clause set forth therein.

Section 7.303-11 has been revised as follows:

§ 7.303-11 Subcontracts.

In accordance with the requirements of § 3.903-1 of this subchapter, insert an appropriate Subcontracts Clause.

Subpart D—Clauses for Cost-Reimbursement Type Research and Development Contracts

Section 7.402-3(b) (6) and (d) (4) have been revised as follows:

§ 7.402-3 Allowable cost, fixed fee, and payments.

* * *

(b) * * *

(6) In the case of contracts with educational institutions, the reference in the alternate paragraph (a) of the foregoing clause, set forth in (4) (iii) above, to "Part 2 of Section XV" shall be deleted, and, in lieu thereof, reference shall be made to "Part 3 of Section XV".

* * *

(d) * * *

(4) The instructions set forth in paragraph (b) (1), (2) and (7) of this section, relating to the clause set forth in (a) of this section, apply with equal force to the clause set forth in paragraph (c) of this section.

Section 7.402-7(a) has been revised as follows:

§ 7.402-7 Records.

(a) In accordance with the instructions in § 7.203-7, insert the contract clause set forth therein. In the case of contracts which establish separate periods of performance but which do not contain the alternate subparagraph (a) (4) authorized by § 7.203-7(b), such subparagraphs may be inserted by amendment or, in the alternative, the retention of records may be administered in accordance with the procedure set forth in the alternate subparagraph (a) (4) of the clause prescribed by § 7.203-7(a).

Section 7.402-8 has been revised as follows:

§ 7.402-8 Subcontracts.

(a) Subject to the instructions set forth in paragraph (b) of this section, and except as provided in paragraph (c) of this section with respect to contracts without fee with educational and non-profit institutions, insert the following clause.

SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time-material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) Notwithstanding (b) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (b) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing

system and the subcontract is within the limitations of such approval.

(b) In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (b) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and, in (i), (iv), and (v) thereof, dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures.

(c) In contracts without fee with educational institutions, insert the following paragraph in lieu of paragraph (b) of the clause set forth in paragraph (a) of this section, and change (iii) in paragraph (f) to (iv).

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or (iv) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of either (A) severable industrial facilities having a value in excess of \$1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (B) special tooling having a value in excess of \$1,000, or (v) is on a time-material or labor-hour basis, or (vi) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer required by this paragraph (b).

In the foregoing paragraph (b), the percentage and amount set forth in (ii) thereof may be varied and, in (i), (v), and (vi) thereof, dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. In (iv) thereof, the \$1,000 limit may, in the discretion of the contracting officer, be decreased where it is determined to be in the interest of the Government, in view of such circumstances of each particular contract, as, for example, the nature of the contractor's operations, previous experience with the contractor on comparable procurements, the accounting and purchasing systems of the contractor, accounting and supply systems of the procurement activity, and the capability of the procuring activity to effect close surveillance of the contractor's purchasing and accounting practices. Also, in the discretion of the contracting officer, the cumulative total of such acquisitions of severable industrial facilities may be limited to a stated dollar amount or an amount equal to a stated percentage of the estimated cost beyond which the contractor will be required to obtain written consent of the contracting officer for any additional acquisitions of

such facilities. With respect to special tooling, the \$1,000 limit may be increased.

Section 7.402-12 has been revised as follows:

§ 7.402-12 Renegotiation.

In accordance with the requirements of § 7.103-13, insert the appropriate contract clause set forth therein.

PART 8—TERMINATION OF CONTRACTS

Part 8 has been amended as follows: § 8.209-3 to determine status of Government property in settlement of terminated nonprofit R&D contracts; § 8.211-2(a) to increase the authority of a Settlement Review Board below the level of the Head of a Procuring Activity to approve settlements up to \$1,000,000, instead of \$500,000; § 8.402(a) to preclude duplication of costs in the election to discontinue vouchers and to submit a settlement proposal; and § 8.501-2(b) to maintain Government control over disposition of property dangerous to public health, safety, or welfare. These amended sections appear below.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 8.209-3 Government property.

Before any settlement agreement is executed, the contracting officer shall determine the status of the Government property account for the terminated contract. If the audit of such property required by § 30.2, Appendix E, paragraph 404, or § 30.3, Appendix C, paragraph 215, discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

§ 8.211-2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves \$25,000 or more (see § 8.101-1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is \$25,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is \$25,000 or more;

(3) The Head of the Procuring Activity concerned determines that a review is desirable; or

(4) The contracting officer, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of \$1,000,000 shall be by a Board at the Head of the Procuring Activity level.

Section 8.213(b) has been revised as follows:

§ 8.213 Cost principles applicable to the settlement of certain terminated research and development contracts.

(b) Costs incurred in the performance of the work terminated shall be determined on the basis of the principles set forth in Part 15 of this subchapter, Subparts B or C, whichever is applicable.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 8.402 Election to discontinue vouchers.

(a) After the effective date of termination, the contractor may elect to discontinue the use of Standard Form 1034 (Public Voucher). Such election shall be made in the manner required by the contracting officer (in the case of the Navy, the Comptroller of the Navy (Contract Audit Division)). Upon such election, the contractor shall not be permitted to resume the use of Standard Form 1034, and shall submit unvouchered costs on the settlement proposal form prescribed in § 8.803. On the basis of such settlement proposals, partial settlements may be made from time to time as appropriate.

Subpart E—Disposition of Termination Inventory

§ 8.501-2 General restrictions on contractor's authority.

(a) The following general restrictions are in addition to specific restrictions set forth in this Subpart E.

(b) The authority of a contractor to purchase, retain, or dispose of termination inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to (1) any applicable Government restrictions on the disposition of property which is either classified by reason of military security or is dangerous to public health, safety or welfare, and (2) any contract provisions regarding the disposition of material subject to a lien.

Subpart G—Clauses

§ 8.701 Termination clause for fixed-price contracts.

Termination for Convenience of the Government

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the Office of the Contractor but without direct charge to the Government, all its books, records,

documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.702 Termination clause for cost-reimbursement type contracts.

Termination

(k) [Deleted]

§ 8.703 Termination clause for fixed-price construction contracts.

Termination for Convenience of the Government

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.704-1 Termination clause.

The following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution. *Provided* such contract is placed on a no-fee or no-profit basis.

§ 8.706 Subcontract termination clause.

Termination.

(1) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Section VIII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of three years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all its books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder, or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

PART 9—PATENTS, DATA, AND COPYRIGHTS

Subpart A—Patents

The introductory paragraph in § 9.106-1 has been revised as follows:

§ 9.106-1 Classified contracts to be performed outside the United States.

The following clause shall be included in classified contracts and in every

unclassified contract which covers or is likely to cover classified subject matter where the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery:

Paragraph (h) of the clause in § 9.107-2(b) has been revised as follows:

§ 9.107-2 License rights—domestic contracts.

(b) Contract clause.

PATENT RIGHTS

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

Section 9.107-3 has been revised as follows:

§ 9.107-3 License rights—foreign contracts.

A patent rights clause shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed outside the United States, its Territories, its possessions, or Puerto Rico. The clause set forth below may be used except as provided in § 9.107-7 with respect to contracts on behalf of the National Aeronautics and Space Administration; however, any other clause tailored to meet requirements peculiar to foreign procurement may be used in lieu thereof: *Provided*, It incorporates the principles of the clause below, except that principles of paragraphs (c) and (d) thereof may be omitted if, in the opinion of the contracting officer (on a case-by-case basis), the inclusion of withholding or other enforcement provisions is neither desirable nor necessary.

PART 11—FEDERAL, STATE, AND LOCAL TAXES

Subpart D—Contract Clauses

The Federal, State, and Local Taxes clause in § 11.401-2 for use in certain negotiated fixed-price contracts in excess of \$10,000 where the contracting officer is not satisfied that the contract price excludes contingencies for State and local taxes, has been revised to reflect various court decisions in tax cases involving State and local governments. The instructions for use of the clause have been expanded, and the applicability of the clause in § 11.401-1 with re-

spect to negotiation has been limited to contracts in excess of \$10,000, in lieu of the \$2,500 limitation which previously existed.

1. The introductory paragraph in § 11.401-1 now reads as follows:

§ 11.401-1 Clause for advertised and certain negotiated contracts.

The following clause shall be inserted in (a) all formally advertised contracts and (b) negotiated fixed-price type contracts in excess of \$10,000, where the contracting officer is satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes.

2. Section 11.401-2, as revised, now reads as follows:

§ 11.401-2 Alternate clause for certain negotiated contracts.

(a) *Use of clause.* (1) The clause set forth in paragraph (b) of this section shall be inserted in all negotiated fixed-price contracts in excess of \$10,000 where the contracting officer is not satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes. Guidelines for using the clause are set forth below.

(2) Subparagraphs (d) (1) and (d) (2) of the clause, respectively, provide for upward and downward escalation for certain taxes. Subparagraph (d) (4) prohibits upward and downward escalation for social security, income, franchise, excess profit, capital stock, unemployment compensation and property taxes, except:

(i) Income and franchise taxes levied on or measured by (a) sales or receipts from sales, or (b) the contractor's possession or use of Government-owned property, and

(ii) Property taxes allocable to the contract which are assessed on completed supplies covered by the contract, or on special tooling, raw materials, components, work-in-process, or on the contractor's interest in or use of Government-owned property.

(3) Paragraph (e) of the clause provides for the furnishing by the Government of evidence of exemption from taxes which the contractor warrants were excluded from the contract price. Evidence of exemption shall be issued only where a reasonable basis therefor exists.

(4) Paragraph (f) (1) of the clause obligates the contractor to notify the contracting officer of any tax matters (e.g. unexpected tax assessments or new legislation) which reasonably may be expected to result in an increase or decrease in the contract price. Paragraph (f) (2) obligates the contractor to follow instructions of the contracting officer when an adjustment in the contract price may be required, and provides for adjustment of the contract price to cover the costs of such action.

(5) Paragraph (b) of the clause furnishes criteria for determining the taxes included in the contract price. The contracting officer may authorize the exclusion of a specific tax from the contract price. Where the contracting of-

ficer has doubt as to the applicability or allocability of any tax, language appropriate to the particular circumstances should be included in the contract after obtaining any approval required by the Department concerned. Special consideration should be accorded taxes assessed on the contractor's interest in or use of Government-owned real and personal property. In accordance with Departmental procedures, the following provision may be inserted in any contract under which the contractor has possession of Government-furnished property or property to which the Government has title on the tax assessment date, pursuant to progress payment clauses or otherwise:

All property taxes assessed on the Contractor's interest in or use of Government-owned property are excluded from the contract price.

(6) Where Government property is furnished under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

(b) Clause.

FEDERAL, STATE, AND LOCAL TAXES

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) By Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract or to property or interests in property, or

(ii) Pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties are included in the contract price.

(d) (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 paragraphs (b) and (c), or of a tax or duty 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

(iii) Of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be correspondingly increased; *provided* that the contractor warrants in writing that no amount of 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 paragraphs (b) and (c);

(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 (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) Nothing in this paragraph (d) shall be applicable to social security taxes, income and franchise taxes, except such taxes as are levied on or are measured by sales or receipts from sales, or the Contractor's possession or use of Government-owned property; excess profits taxes; capital stock taxes; unemployment compensation taxes; or property taxes, except such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on special tooling, raw materials, components, work-in-process, or on the Contractor's interest in or use of Government-owned property.

(5) No adjustment of less than \$100 is required to be made in the contract price pursuant to this paragraph (d).

(e) 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 any tax which the Contractor warrants in writing was excluded from the contract price. 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. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished, only at the discretion of the Contracting Officer.

(f) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to 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 attorneys' fees.

PART 12—LABOR

Subpart A—Basic Labor Policies

Section 12.104 is revised as follows:

§ 12.104 Meeting manpower requirements.

It shall be the policy of each Department to cooperate with and to encourage

contractors to utilize, to the fullest extent practicable, the United States Employment Service (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, in the District of Columbia, 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 D—Labor Standards in Construction Contracts

Sections 12.403-1(5), 12.404-6, and 16.803-1 have been revised to reflect the change occasioned by the enactment of P.L. 85-800, which amended the Copeland (Anti-Kickback) Act (40 U.S.C. 276c) to authorize the submission of a signed statement instead of an affidavit with construction contractors' payrolls.

1. Section 12.403-1(5), as revised, reads as follows:

§ 12.403-1 Clauses for general use.

* * * * *

(5) Copeland ("Anti-Kickback") Act—Nonrebate of Wages.

COPELAND ("ANTI-KICKBACK") ACT—NONREBATE OF WAGES

The regulations of the Secretary of Labor applicable to Contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government prime Contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions.

2. Section 12.404-6 now reads as follows:

§ 12.404-6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the contractor shall submit, or cause to be submitted for himself and his subcontractors, (1) copies of certified weekly payrolls in compliance with Clause (4) of § 12.403-1 and (2) weekly payroll statements in the form prescribed by § 16.803-1(c) of this subchapter.

(b) *Examination.* The Department concerned shall make such examination of the certified payrolls and statements as may be necessary to assure compliance with contract, statutory and regulatory requirements. Particular attention should be given to the correctness of classifications and any disproportionate

employment of laborers, helpers or apprentices.

(c) *Preservation.* Certified payrolls and statements shall be preserved by the Department concerned for a period of 3 years from completion of the contract and shall be produced at the request of the Secretary of Labor at any time during such period.

Subpart F—Walsh-Healy Public Contracts Act

Section 12.602-1, as revised, reads as follows:

§ 12.602-1 General.

The requirement set forth in the preceding paragraph applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed \$10,000 in amount.

PART 13—GOVERNMENT PROPERTY

Subpart D—Industrial Facilities

Section 13.407 has been revised to provide additional guidance toward achieving the equalization of competitive advantage in situations where potential suppliers have varying amounts of Government facilities, and also to provide that all contracts and subcontracts on which facilities are used shall be recorded in the facilities contract file. Section 13.407, as revised, reads as follows:

§ 13.407 Right of contractor to use.

(a) (1) Each facilities contract shall limit the right of the contractor to use the industrial facilities to the performance of the contracts and subcontracts specified or otherwise identified in the facilities contract, added thereto by amendment, or approved in writing by the Contracting Officer cognizant of the facilities contract. In the latter event, a record of approved contracts and subcontracts shall be included in the facilities contract file. Where a facilities contract authorizes the use of industrial facilities in the performance of contracts entered into by formal advertising, the facilities contract shall specify a cash rental to be paid in such cases. Facilities contracts may authorize the use of industrial facilities without charge in the performance of contracts other than those entered into by formal advertising if—

(i) The user is not thereby placed in a favored competitive position; and

(ii) The Government receives adequate consideration through reduced cost for supplies or services or otherwise (see § 13.601-1). Such reduced cost may be established in the initial negotiation of new contracts, or by the readjustment of prices (including fixed-fees and allowable costs) of existing contracts, or by price redetermination in the case of negotiated fixed-price contracts where the saving to the contractor cannot be accurately forecast.

(2) Where a facilities contract authorizes the use of industrial facilities without charge to perform subcontracts, it is likewise important to assure that

the waiver of a use charge is consistent with the requirements that (i) the subcontractor is not thereby placed in a favored competitive position and (ii) the Government receives adequate consideration through reduced cost for the supplies or services or otherwise (see § 13.601-1); therefore, the use of industrial facilities without charge to perform a particular subcontract shall not be authorized unless the contracting officer determines that these requirements are met.

(3) In order to insure that a concern possessing Government facilities without charge is not thereby placed in a favored position in competing for Government business, either as a prime contractor or a subcontractor, with relation to concerns possessing either a lesser amount of Government facilities or their own facilities, a suitable method for eliminating any competitive pricing advantage shall be employed. This may be accomplished (i) by charging a rental in a manner prescribed in this Part 13, or (ii) in the price evaluation of competitive proposals, by adding to the proposed contract price of a concern possessing Government facilities without charge an evaluation factor consisting of an amount which it is estimated would equal such rental charge, or (iii) by any other available method which will give effect to the basic policy set forth in this § 13.407 under the facts of the particular case. It is recognized that there may be situations in which there is no need for charging rental or applying equalization factors to assure that the user possessing Government facilities is not thereby placed in a favored competitive position, as, for example, where the only competing concerns possess substantially the same amount of Government facilities on a no-charge basis for use in the performance of a proposed contract, or where the procurement is to be made from a sole source, or where the award is to be made on a basis in which the rental cost of Government-owned facilities is not a controlling factor. Where one of the methods authorized by this section is used to eliminate competitive advantage in the award of a contract for supplies or services, the contract file shall be documented to show the method employed.

(4) Varying methods or techniques may be required to achieve equalization of competitive advantage in different industries or commodity areas, or by reason of the complexity of the facility pattern in contractors' plants, or other considerations. Whatever method or technique is used, it should conform to the basic policy of eliminating competitive advantage in pricing, and should do so in a manner consistent with the rental policy and considerations applicable to the use by contractors of Government facilities. Each Department shall adopt such procedures of administration and review as will accomplish the foregoing objectives.

(b) When use without charge to the contractor is not authorized by (a) above or is not advisable because of the competitive aspect, administrative difficulties, or other considerations, the contract shall require the contractor to pay a fair

and reasonable use charge. Such fair and reasonable use charge shall be established on the basis of sound commercial practice, including any prevailing commercial rates, and shall be such as to prevent the contractor from obtaining an unfair competitive advantage by reason thereof. The use charge for production equipment and for other personal property and equipment constituting industrial facilities shall conform to the rates prescribed in § 13.601.

(c) A facilities contract may also provide that the contractor may be authorized by the contracting officer to make incidental use of all or part of the facilities covered by the contract for work other than for an agency of the Department of Defense. However, where a facilities contract is no longer required in connection with the performance of a Government contract or contracts, it shall not be continued solely for the purpose of authorizing commercial use of all or any part of the facilities covered by the facilities contract. The rental rates applicable to Government facilities as provided in § 13.601, shall apply to facilities furnished under a facilities contract for the period that such facilities are authorized for use for commercial purposes.

Subpart E—Contract Clauses

1. Section 13.501 has been revised as follows:

§ 13.501 Applicability.

(a) As used in this subpart, the term "fixed-price contract for supplies or services" shall mean any contract (1) entered into either by formal advertising or by negotiation, but excluding purchase orders for \$5,000 or less, letter contracts, letters of intent, notices of award and amendments or modifications to contracts or purchase orders; (2) at a fixed-price (with or without provisions for price redetermination, escalation, or other form of price adjustment) as covered in § 3.403 of this subchapter; and (3) for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

(b) As used in this subpart, the term "cost-reimbursement type contract for supplies or services" shall mean any contract (other than a letter contract, letter of intent, notice of award, or amendment or modification of a contract) entered into by negotiation on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404, for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

2. The introductory paragraph in § 13.502 has been revised as follows:

§ 13.502 Government-furnished property clause for fixed-price contracts.

The following clause shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, material,

special tooling, or such industrial facilities as may be furnished under § 13.402 (i).

Appropriate alternative contractual provisions have been added to the Government property clauses in §§ 13.505 and 13.506, due to a new Subpart H of this Part, which implements P.L. 85-932, section 2, authorizing the vesting of title to equipment purchased with contract funds in nonprofit organizations engaged in scientific research. The new alternatives in §§ 13.505 and 13.506 read as follows:

§ 13.505 Government-furnished property clause for fixed-price type contracts with non-profit institutions.

GOVERNMENT-FURNISHED PROPERTY

(c) Title to the Government-furnished property shall remain in the Government. Title to Government-furnished property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

In accordance with § 13.802, the following alternative paragraph (c) may be used in contracts for basic or applied research:

(c) Title to Government-furnished property shall remain in the Government, except for that equipment the title to which is transferred to the Contractor pursuant to this paragraph. The Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That, the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government-furnished property. Title to Government-furnished property, not otherwise transferred to the Contractor, shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

§ 13.506 Government property clauses for cost-reimbursement type research and development contracts with non-profit institutions.

GOVERNMENT PROPERTY

(c) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract,

or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

In accordance with § 13.802, the following additional language may be added to paragraph (c) in contracts for basic or applied research :

Notwithstanding the provisions of this paragraph (c) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property.

A new Subpart H has been added to this Part 13 implementing P.L. 85-934, section 2, which authorizes the vesting of title to equipment purchased with contract funds in nonprofit organizations engaged in scientific research. Subpart H reads as follows:

Subpart H—Transfer of Title to Equipment to Nonprofit Education or Research Institutions

§ 13.800 Scope of subpart.

This subpart implements P.L. 85-934, section 2 which gives the Department of Defense discretionary authority to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research.

§ 13.801 Purpose of the legislation.

The general purpose of the legislation implemented by this subpart is to facilitate the scientific research performed under contract for the Government by the nonprofit institutions and organizations described in § 13.800. It is intended to permit the elimination of the record-keeping required when the Government retains title to equipment furnished or purchased under a research contract, in those cases where the cost of such record-keeping to the contractor or to the Government is out of proportion to the value of the equipment. It is further intended to reduce where desirable the time and labor involved in formally circulating through the Government long lists of highly specialized or minor items of equipment or in relocating major equipment when such relocation is impracticable or uneconomical and not required for other research programs of the Government. Finally, it is intended to provide a measure of administrative flexibility when, from the

standpoint of increased research effectiveness and in the absence of other Departmental or Governmental requirements, it is desirable to transfer title to equipment to such research contractors.

§ 13.802 Transfer of title.

(a) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research may provide, or may be amended to provide, that the contracting officer may transfer title to equipment to the contractor. In connection with any such contract which so provides, the contracting officer may vest in the contractor title to any equipment purchased at any time with funds which were available for grants or contracts for the conduct of basic or applied research, if not prohibited by controls governing the equipment involved, and if it is determined that such vesting is in furtherance of the objectives of the Department or agency concerned, and either—

(1) As to each item of equipment having an acquisition cost of \$1,000 or less, that—

(i) Retention of title in the Government would create an administrative burden not warranted by the value of the equipment, or

(ii) The keeping of inventory and records by the contractor would become prohibitively complicated or expensive; or

(2) As to any item of equipment—

(i) That the item is of such nature that it would be impracticable or uneconomical to remove it from the contractor's possession, or

(ii) After a reasonable check by the contracting officer, commensurate with the value of the item involved, that there is no requirement within the Department of Defense for the item: *Provided*, That, if the acquisition cost of the item exceeds \$25,000, the item shall be further screened in accordance with Departmental procedures.

(b) The vesting of title as provided in paragraph (a) of this section shall be accomplished following a written determination by the contracting officer that the applicable criteria in paragraph (a) of this section have been met. With respect to items of equipment having an acquisition cost in excess of \$1,000, such determination shall be subject to prior approval in accordance with Departmental procedures.

(c) Where title to equipment is vested pursuant to paragraph (a) of this section, the contractor shall be without further obligation to the Government with respect to such equipment, except that the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract.

§ 13.803 Contract clauses.

Where it is anticipated that title to equipment may be vested in the contrac-

tor in accordance with this Part, the alternate clause in § 13.505(c) shall be included in fixed-price research and development contracts and the alternate clauses in § 13.506 (c) and (d) will be inserted in cost-reimbursement research and development contracts.

PART 16—PROCUREMENT FORMS

Subpart B—Forms for Negotiated Procurement

Section 16.202-1 (a) (2) and (b) (1) has been revised as follows:

§ 16.202 Negotiated contract forms.

(a) *General.* * * *

(2) DD Form 1270 (General Provisions (Short Form Negotiated Contract)) is designed for use with DD Form 1231 as set forth in (b) below, but need not be used in contracts to be performed outside the United States, its Territories, its possessions or Puerto Rico.

(b) *Short form negotiated supply contracts.* (1) Except as provided in paragraph (a) (2) and (3) of this section, DD Form 1231 (Negotiated Contract), DD Form 1270 (General Provisions (Short Form Negotiated Contract)), and Standard Form 33 (Continuation Sheet) shall be used for negotiated fixed-price type supply contracts which do not exceed \$10,000 and which are for standard or commercial type items not involving special inspection due to complicated specifications.

Subpart H—Miscellaneous Forms

Section 16.803-1(c) has been revised as follows:

§ 16.803-1 Construction contracts.

(c) When required by § 12.404-6(a) of this subchapter and the contract clauses prescribed by § 12.403-1 or § 12.403-4 of this subchapter, a "Contractor's Weekly Payroll Statement" (DD Form 879) shall be submitted by the contractor. When the contract clauses prescribed by § 12.403-2 of this subchapter are applicable, DD Form 879 likewise shall be used but with paragraphs (2) and (3) deleted or omitted from the statement. A supply of DD Form 879 may be furnished to contractors for their use. However, the existence of the DD Form shall not preclude any contractor from submitting the statement on a contractor's combined payroll-statement form or from reproducing the DD Form as a separate contractor's form: *Provided*, That in either instance there is a certification on the contractor's form that the statement is reproduced in the exact language of the DD Form.

G. C. BANNERMAN,
Director for Procurement Policy,
Office of Assistant Secretary
of Defense (Supply &
Logistics).

DECEMBER 21, 1959.

[F.R. Doc. 59-10973; Filed, Dec. 23, 1959; 8:50 a.m.]

[Amdt. 50]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments have been made to this subchapter:

PART 8—TERMINATION OF CONTRACTS**Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement-Type Contracts**

Section 8.213 has been revised to eliminate separate termination cost principles and to reflect the applicability of the cost principles contained in revised Part 15 to the negotiation of termination settlements. Section 8.213, as revised, now reads as follows:

§ 8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

The cost principles and procedures set forth in Subpart C, Part 15, of this chapter shall, subject to the general policies set forth in § 8.301, be a guide for the negotiation of settlements under fixed price or cost-reimbursement type contracts for experimental, developmental or research work with educational institutions, in accordance with § 15.103 and Subpart F, Part 15 of this chapter.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed Price Type Contracts

Sections 8.301 and 8.302 have been revised in their entirety, to eliminate separate termination cost principles and to reflect the applicability of the cost principles contained in Part 15 to the negotiation of termination settlements. The cross-reference to § 8.302(b)(27) has been removed from § 8.303(a), and a reference to § 15.205-42(c) has been substituted in lieu of § 8.302(b)(3) in § 8.304(b)(3). Sections 8.301 and 8.302, as revised, now read as follows, and §§ 8.303(a), and 8.304(b)(3), as revised, now read as follows:

§ 8.301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to

be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount. But the total amount payable to the contractor, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, shall not exceed the contract price less payments otherwise made or to be made under the contract.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of record keeping, reporting and accounting, in connection with the settlement of termination claims, shall be kept to the minimum compatible with the reasonable protection of the public interest.

§ 8.302 Cost principles.

The principles set forth in the applicable subpart of Part 15 of this chapter shall be used as a guide for the evaluation of cost information in the negotiation of a termination settlement.

§ 8.303 Allowance for profit.

(a) *General.* Profit shall be allowed only on preparations made and work done by the contractor for the terminated portion of the contract but may not be allowed on the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see § 8.208-5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

§ 8.304 Adjustment for loss.

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 15.205.42(c) of this chapter)), reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) the total cost incurred prior to termination plus the estimated cost to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

Part 15 has been revised in its entirety. Part 15 contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost-reimbursement type contracts and contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts and

contracts terminated for the convenience of the Government. Not all of the material is new. The more significant additional changes are briefly set forth below.

Subpart B, Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts with Commercial Organizations: This subpart has been completely rewritten. Rather than separate lists of allowable and unallowable costs, there is a single list of selected costs with explanatory material on each item. In addition, such terms as "Reasonableness" and "Allocability" are defined. The policy changes throughout have been developed over a period of years and reflect considerable industry and Government discussion.

Subpart C, Research Contracts with Educational Institutions: Except for minor editorial changes and the addition of coverage on termination costs consistent with that appearing in Subpart B, this Subpart C is unchanged from that which was published previously.

Subpart D, Construction Contracts: Except for the deletion of § 15.400, this subpart is unchanged. However, changes in this subpart are now under consideration and will be reflected in a future amendment.

Subpart E, Reserved: The material formerly appearing in this subpart with respect to costs requiring special consideration has been deleted in its entirety, inasmuch as it is covered elsewhere in this revised Part 15. Principles for cost-reimbursement facilities contracts will appear in Subpart E at a later date.

Subpart F, Guidelines for Application in the Negotiation and Administration of Fixed-price Contracts and in the Negotiation of Termination Settlements: The previous Subpart F relating to cost interpretations has been deleted since it is covered in the revised Subpart B. The new Subpart F provides guidance for the use of Subparts B, C, and D of Part 15—(1) in the evaluation of costs in pricing of negotiated fixed-price type contracts and subcontracts in those instances where such evaluation is required to establish prices for such contracts and (2) in the negotiation of termination settlements.

In order to permit familiarization by all concerned, this amendment shall be effective at all applicable echelons with respect to contracts issued on or after July 1, 1960, but compliance is authorized upon receipt hereof. Existing cost-reimbursement type contracts may be amended, but only if the amendment will not be to the disadvantage of the Government. Thus, if a proposed amendment would result in the allowance of greater costs, there must be an equivalent benefit to the Government in the form of improved delivery schedules, increased quantities of work, offsetting reductions in administrative expenses, or the like. Part 15, as revised, now reads as follows:

Sec.

15.000 Scope of subpart.

Subpart A—Applicability

- 15.101 Scope of subpart.
- 15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.
- 15.103 Cost-reimbursement research contracts with educational institutions.
- 15.104 Cost-reimbursement construction contracts.
- 15.105 Cost-reimbursement facilities contracts.
- 15.106 Use of cost principles for fixed-price contracts.
- 15.107 Advance understandings on particular cost items.

Subpart B—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

- 15.201 Basic considerations.
 - 15.201-1 Composition of total cost.
 - 15.201-2 Factors affecting allowability of costs.
 - 15.201-3 Definition of reasonableness.
 - 15.201-4 Definition of allocability.
 - 15.201-5 Credits.
- 15.202 Direct costs.
- 15.203 Indirect costs.
- 15.204 Application of principles and procedures.
- 15.205 Selected costs.
 - 15.205-1 Advertising costs.
 - 15.205-2 Bad debts.
 - 15.205-3 Bidding costs.
 - 15.205-4 Bonding costs.
 - 15.205-5 Civil defense costs.
 - 15.205-6 Compensation for personal services.
 - 15.205-7 Contingencies.
 - 15.205-8 Contributions and donations.
 - 15.205-9 Depreciation.
 - 15.205-10 Employee morale, health, and welfare costs and credits.
 - 15.205-11 Entertainment costs.
 - 15.205-12 Excess facility costs.
 - 15.205-13 Fines and penalties.
 - 15.205-14 Food service and dormitory costs and credits.
 - 15.205-15 Fringe benefits.
 - 15.205-16 Insurance and indemnification.
 - 15.205-17 Interest and other financial costs.
 - 15.205-18 Labor relations costs.
 - 15.205-19 Losses on other contracts.
 - 15.205-20 Maintenance and repair costs.
 - 15.205-21 Manufacturing and production engineering costs.
 - 15.205-22 Material costs.
 - 15.205-23 Organization costs.
 - 15.205-24 Other business expenses.
 - 15.205-25 Overtime, extra-pay shift and multi-shift premiums.
 - 15.205-26 Patent costs.
 - 15.205-27 Pension plans.
 - 15.205-28 Plant protection costs.
 - 15.205-29 Plant reconversion costs.
 - 15.205-30 Precontract costs.
 - 15.205-31 Professional service costs; legal, accounting, engineering, and other.
 - 15.205-32 Profits and losses on disposition of plant, equipment, or other capital assets.
 - 15.205-33 Recruiting costs.
 - 15.205-34 Rental costs (including sale and leaseback of facilities).
 - 15.205-35 Research and development costs.
 - 15.205-36 Royalties and other costs for use of patents.
 - 15.205-37 Selling costs.
 - 15.205-38 Service and warranty costs.
 - 15.205-39 Severance pay.
 - 15.205-40 Special tooling costs.
 - 15.205-41 Taxes.
 - 15.205-42 Termination costs.
 - 15.205-43 Trade, business, technical and professional activity costs.
 - 15.205-44 Training and educational costs.
 - 15.205-45 Transportation costs.
 - 15.205-46 Travel costs.

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AUTHORITY: §§ 15.600 to 15.603 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202

§ 15.000 Scope of Part.

This Part contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost-reimbursement type contracts and contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts and contracts terminated for the convenience of the Government.

Subpart A—Applicability**§ 15.101 Scope of subpart.**

This subpart describes the applicability of succeeding subparts of this part to the various types of contracts in connection with which cost principles and procedures are used.

§ 15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for supplies, services, or experimental, developmental, or research work (other than with educational institu-

tions, as to which § 15.103 applies), except that it does not include facilities contracts (see § 15.105) or construction contracts (see § 15.104). The cost principles and procedures set forth in Subpart B of this part shall be incorporated by reference in cost-reimbursement supply and research contracts with other than educational institutions as the basis—

(a) For determination of reimbursable costs under such contracts, including cost-reimbursement type subcontracts thereunder, and the cost-reimbursement portion of time-and-materials contracts (§ 3.405-1 of this chapter);

(b) For the negotiation of overhead rates (Subpart G, Part 3 of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 8, of this chapter), and for settlement of such contracts by determination (§ 8.209-7 of this chapter).

§ 15.103 Cost-reimbursement research contracts with educational institutions.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart C of this part shall be incorporated by reference in cost-reimbursement research contracts with educational institutions as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) For the negotiation of overhead rates (Subpart G, Part 3 of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 8, of this chapter), and for settlement of such contracts by determination (§ 8.209-7 of this chapter).

In addition, Subpart C of this part is to be used in determining the allowable costs of research and development performed by educational institutions under grants.

§ 15.104 Cost-reimbursement construction contracts.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes cost-reimbursement type contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Subpart D of this part, shall be incorporated by reference in cost-reimbursement construction contracts as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type

contracts, including cost-reimbursement type subcontracts thereunder:

(b) For the negotiation of overhead rates (Subpart G, Part 3, of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 3, of this chapter), and for settlement of such contracts by determination (§ 8.209-7 of this chapter).

§ 15.105 Cost-reimbursement facilities contracts.

[Reserved.]

§ 15.106 Use of cost principles for fixed-price contracts.

Subpart F of this part provides guidance for the use of Subparts B, C and D of this part where appropriate, in the evaluation of costs in connection with the negotiation of certain fixed-price type contracts and termination settlements.

§ 15.107 Advance understandings on particular cost items.

The extent of allowability of the selected items of cost covered in Subparts B to E of this part has been stated to apply broadly to many accounting systems in varying contract situations. Thus, as to any given contract, the reasonableness and allocability of certain items of cost may be difficult to determine, particularly in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by contracting officers individually, or jointly, for all defense work of the contractor, as appropriate. Any such agreement should be incorporated in cost-reimbursement type contracts, or made a part of the contract file in the case of negotiated fixed-price type contracts, and should govern the cost treatment covered thereby throughout the performance of the contract. But the absence of such an advance agreement on any element of cost will not, in itself, serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important:

- (a) Compensation for personal services;
- (b) Use charge for fully depreciated assets;
- (c) Deferred maintenance costs;
- (d) Pre-contract costs;
- (e) Research and development costs;
- (f) Royalties;
- (g) Selling and distribution costs; and
- (h) Travel costs, as related to special or mass personnel movement.

Subpart B—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

§ 15.201 Basic considerations.

§ 15.201-1 Composition of total cost.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

§ 15.201-2 Factors affecting allowability of costs.

Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this subpart, or otherwise included in the contract as to types or amounts of cost items.

§ 15.201-3 Definition of reasonableness.

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(c) The action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(d) Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

§ 15.201-4 Definition of allocability.

A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a contract, product, product line, process, or class of customer or activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a

cost is allocable to a Government contract if it—

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

§ 15.201-5 Credits.

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

§ 15.202 Direct costs.

(a) A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other work of the contractor are direct costs of that work and are not to be charged to the contract directly or indirectly. When items ordinarily chargeable as indirect costs are charged to Government work as direct costs, the cost of like items applicable to other work of the contractor must be eliminated from indirect costs allocated to Government work.

(b) This definition shall be applied to all items of cost of significant amount unless the contractor demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in § 15.203.

§ 15.203 Indirect costs.

(a) An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivisions of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be gov-

erned by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accord with those generally accepted accounting principles which are applicable in the circumstances. The contractor's established practices, if in accord with such accounting principles, shall generally be acceptable. However, the methods used by the contractor may require re-examination when:

(1) Any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor; or

(2) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(e) A base period for allocation of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period will be the contractor's fiscal year; however, use of a shorter period may be appropriate in case of (1) contracts whose performance involves only a minor portion of the fiscal year, or (2) where it is general practice in the industry to use a shorter period. In any event the base period or periods shall be so selected as to avoid inequities in the allocation of costs. When the contract is performed over an extended period of time, as many such base periods will be used as will be required to represent the period of contract performance.

§ 15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 15.201-3), allocable (see § 15.201-4), and determined to be allowable in view of the other factors set forth in §§ 15.201-2 and 15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement type subcontract of any tier above the first fixed-price subcontract are allowable to the extent that allowance is consistent with the subpart of

this part which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this subpart were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if subpart D of this part were incorporated in the subcontract.

(c) Selected items of cost are treated in § 15.205. However, § 15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this subpart and, where appropriate, the treatment of similar or related selected items.

§ 15.205 Selected costs.

§ 15.205-1 Advertising costs.

(a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like. The following advertising costs are allowable:

(1) Advertising in trade and technical journals: *Provided*, Such advertising does not offer specific products or services for sale but is placed in journals which are valuable for dissemination of technical information within the contractor's industry;

(2) Help-wanted advertising, as set forth in § 15.203-33, when considered in conjunction with all other recruitment costs;

(3) Costs of participation in exhibits—

(i) Upon invitation of the Government, or

(ii) Which exhibits are for the purpose of disseminating technical information within the contractor's industry; however, such costs are not allowable under this subdivision if the exhibit offers specific products or services for sale;

(4) Advertising for the exclusive purpose of obtaining scarce materials, plant, or equipment, or disposing of scrap or surplus materials, in connection with the contract.

(b) Except as provided above, all other advertising costs are unallowable.

§ 15.205-2 Bad debts.

Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related collection costs, and related legal costs, are unallowable.

§ 15.205-3 Bidding costs.

Bidding costs are the costs of preparing bids or proposals on potential Government and non-Government contracts

or projects, including the development of engineering data and cost data necessary to support the contractor's bids or proposals. Bidding costs of the current accounting period of both successful and unsuccessful bids and proposals normally will be treated as allowable indirect costs, in which event no bidding costs of past accounting periods shall be allowable in the current period to the Government contract. However, if the contractor's established practice is to treat bidding costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

§ 15.205-4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of his business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 15.205-5 Civil defense costs.

(a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets under paragraph (a) of this section are allowable through depreciation in accordance with § 15.205-9.

(c) Contributions to local civil defense funds and projects are unallowable.

§ 15.205-6 Compensation for personal services.

(a) *General.* (1) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans. Except as otherwise specifically provided in this § 15.205-6, such costs are allowable to the extent that the total compensation of in-

dividual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such tests need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits.

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(3) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) In addition to the general requirements set forth in subparagraphs (1) through (3) of this paragraph, certain forms of compensation are subject to further requirements as specified in paragraphs (b) through (i) of this section.

(b) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 12.102-4 of this chapter or permitted pursuant to § 12.102-5 of this chapter.

(c) *Cash bonuses and incentive compensation.* Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient perform-

ance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment. (But see § 15.107.) Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in (f) below.

(d) *Bonuses and incentive compensation paid in stock.* Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in paragraph (c) of this section (including the incorporation of the principles of paragraph (f) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in paragraph (f) (3) of this section. (But see § 15.107.)

(e) *Stock options.* The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.* (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regula-

tions of the Internal Revenue Service. (But see § 15.107.)

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental employment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay.* See § 15.205-39.

(i) *Training and education expenses.* See § 15.205-44.

§ 15.205-7 Contingencies.

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at a present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is appli-

cable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, §§ 15.205-16, 15.205-20, and 15.205-39).

§ 15.205-8 Contributions and donations.

Contributions and donations are unallowable.

§ 15.205-9 Depreciation.

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life.

(b) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost: *Provided*, That the amount thereof is computed:

(1) Upon the property cost basis used by the contractor for Federal income tax purposes (see section 167 of the Internal Revenue Code of 1954); or

(2) In the case of nonprofit or tax-exempt organizations, upon a property cost basis which could have been used by the contractor for Federal income tax purposes, had such organizations been subject to the payment of income tax; and in either case

(3) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954, as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in subdivision (i) of this paragraph;

(iii) The sum of the years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subdivision (ii) of this subparagraph.

(c) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in paragraph (a) of this section, vary with volume of production or use of multi-shift operations.

(d) In the case of emergency facilities covered by certificates of necessity a contractor may elect to use normal depreciation without requesting a determination of "true depreciation" or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board. The method elected must be followed consistently throughout the life of the emergency facility. Where an election is made to use normal depreciation, the amount thereof for both the emergency period and the post-emergency period shall be computed in accordance with paragraph (b) of this section. Where an election is made to use "true depreciation," the amount allowable as depreciation:

(1) With respect to the emergency period (5 years), shall be computed in accordance with the determination of the Emergency Facilities Depreciation Board and allocated rateably over the full five year emergency period; provided no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life (but see paragraph (e) of this section); provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(e) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary, for standby purposes.

(f) No depreciation, rental, or use charge shall be allowed on the contractor's assets which have been fully depreciated when a substantial portion of such depreciation was on a basis that represented, in effect, a recovery thereof as a charge against Government contracts or subcontracts. Otherwise, a reasonable use charge may be agreed upon and allowed. (But see § 15.107.) In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, and effect of any increased maintenance charges or decreased efficiency due to age.

§ 15.205-10 Employee morale, health, and welfare costs and credits.

Reasonable costs of health and welfare activities, such as house publications, health or first-aid clinics, recreational activities, and employee counseling services, incurred, in accordance with the contractor's established practice or custom in the industry or area, for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities shall be credited to the costs thereof unless such income has been irrevocably set over to employee welfare organizations.

§ 15.205-11 Entertainment costs.

Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see §§ 15.205-10 and 15.205-42).

§ 15.205-12 Excess facility costs.

Costs of maintaining, repairing, and housing idle and excess contractor-owned facilities, except those reasonably necessary for standby purposes, are unallowable. Any costs of excess plant capacity reserved for defense mobilization production which are to be paid for by the Government should be the subject of a separate contract.

§ 15.205-13 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

§ 15.205-14 Food service and dormitory costs and credits.

Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities. Reasonable losses from the operation of such services are allowable if they are allocated to all activities served. Profits (except profits irrevocably set over to an employee welfare organization of the contractor in amounts reasonably useful for the benefit of the employees at the site or sites of contract performance) accruing to the contractor from the operation of these services, whether operated by the contractor or by a concessionaire, shall be treated as a credit, and allocated to all activities served.

§ 15.205-15 Fringe benefits.

(See § 15.205-6(g).)

§ 15.205-16 Insurance and indemnification.

(a) Insurance includes insurance which the contractor is required to carry, or which is approved, under the terms of the contract, and any other insurance which the contractor maintains in con-

nection with the general conduct of his business.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who has supervision or direction of (a) all or substantially all of the contractor's business, or (b) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (c) a separate and complete industrial operation in connection with the performance of the contract;

(iv) Provisions for a reserve under an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(v) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see § 15.205-6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the contract, except:

(i) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(ii) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(b) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent expressly provided for in the contract, except as provided in paragraph (a) (3) of this section.

§ 15.205-17 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of fi-

nancing and refinancing operations, legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in § 15.205-41. (But see § 15.205-24.)

§ 15.205-18 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

§ 15.205-19 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research and development, or other nature, is unallowable.

§ 15.205-20 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see § 15.205-9):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining contract costs. (But see § 15.107.)

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 15.205-21 Manufacturing and production engineering costs.

Costs of manufacturing and production engineering, including engineering activities in connection with the following, are allowable:

(a) Current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(b) Current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

§ 15.205-22 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (concerning correction of defective work, see the provisions of the contract relat-

ing to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of paragraphs (b) through (e) of this section.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Charges for materials, services, and supplies sold or transferred between plants, divisions or organizations, under a common control, ordinarily shall be allowable to the extent of the lower of cost to the transferor or current market price. However, a departure from this basis is permissible where (1) the item is regularly manufactured and sold by the contractor through commercial channels, and (2) it is the contractor's long-established practice to price inter-organization transfers at other than cost for commercial work: *Provided*, That the charge to the contract is not in excess of the transferor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 15.205-23 Organization costs.

Expenditures, such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable.

§ 15.205-24 Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are

allowable when allocated on an equitable basis.

§ 15.205-25 Overtime, extra-pay shift and multi-shift premiums.

Premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 12.102-4 of this chapter, or permitted pursuant to § 12.102-5 of this chapter.

§ 15.205-26 Patent costs.

Costs of preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the contract relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See § 15.205-36.)

§ 15.205-27 Pension plans.

See § 15.205-6.

§ 15.205-28 Plant protection costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with military security requirements, are allowable.

§ 15.205-29 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the military contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

§ 15.205-30 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (but see § 15.107).

§ 15.205-31 Professional service costs; legal, accounting, engineering, and other.

(a) Costs of professional services rendered by the members of a particular profession who are not employees of the contractor are allowable, subject to paragraphs (b) and (c) of this section, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 15.205-23).

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(2) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(3) The nature and scope of managerial services expected of the contractor's own organizations; and

(4) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(c) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract.

§ 15.205-32 Profits and losses on disposition of plant, equipment, or other capital assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short or long term investments, shall be excluded in computing contract costs (but see § 15.205-9(b) as to basis for depreciation).

§ 15.205-33 Recruiting costs.

Costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable. Where the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond the standard practices in the industry are unallowable.

§ 15.205-34 Rental costs (including sale and leaseback of facilities).

(a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the

amount which the contractor would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: *Provided*, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had it retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in § 15.205-42(e).

§ 15.205-35 Research and development costs.

(a) Basic research, for the purpose of this subpart, is that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this subpart, consists of that type of effort which (1) normally follows basic research, but may not be severable from the related basic research (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(b) Development is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(c) A contractor's independent research and development is that research and development which is not sponsored by a contract, grant, or other arrangement.

(d) A contractor's costs of independent research as defined in paragraphs (a) and (c) of this section shall be allowable as indirect costs (subject to paragraph (h) of this section), provided they are allocated to all work of the contractor.

(e) Costs of contractor's independent development, as defined in paragraphs (b) and (c) of this section (subject to paragraph (h) of this section), are allowable to the extent that such development is related to the product lines for which the Government has contracts, provided the costs are reasonable in amount and are allocated as indirect

costs to all work of the contractor on such product lines. In cases where a contractor's normal course of business does not involve production work, the cost of independent development is allowable to the extent that such development is related and allocated as an indirect cost to the field of effort of Government research and development contracts.

(f) Independent research and development costs shall include an amount for the absorption of their appropriate share of indirect and administrative costs, unless the contractor, in accordance with its accounting practices consistently applied, treats such costs otherwise.

(g) Research and development costs (including amounts capitalized), regardless of their nature, which were incurred in accounting periods prior to the award of a particular contract, are unallowable except where allowable as precontract costs (see § 15.205-30).

(h) The reasonableness of expenditures for independent research and development should be determined in light of all pertinent considerations such as previous contractor research and development activity, cost of past programs and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 15.107 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement: (1) review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects; (2) agreement on a maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; (3) an agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

§ 15.205-36 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless:

- (1) The Government has a license or the right to free use of the patent;
- (2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;
- (3) The patent is considered to be unenforceable; or
- (4) The patent is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the contractor;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the contract.

(c) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See § 15.107, regarding advance understandings.

§ 15.205-37 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 15.107 and 15.205-1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) Notwithstanding paragraph (b) of this section, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 15.205-38 Service and warranty costs.

Such costs include those arising from fulfillment of any contractual obligation of a contractor to provide services, such as installation, training, correcting defects in the products, replacing defective parts, making refunds in the case of inadequate performance, etc. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

§ 15.205-39 Severance pay.

(a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or

(4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

§ 15.205-40 Special tooling costs.

The term "special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (1) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (2) consumable small tools, or (3) general or special machine tools, or similar capital items. The cost of special tooling, when acquired for and its usefulness is limited to one or more Government contracts, is allowable and shall be allocated to the specific Government contract or contracts for which acquired.

§ 15.205-41 Taxes.

(a) Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, are allowable, except for:

(1) Federal income and excess profits taxes;

(2) Taxes in connection with financing, refinancing or refunding operations (see § 15.205-17);

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption out-

weighs the corresponding benefits accruing to the Government; and

(4) Special assessments on land which represent capital improvements.

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided*, That the contractor prior to payment of such taxes:

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment or, (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

§ 15.205-42 Termination costs.

Contract terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the contract not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this subpart in termination situations.

(a) *Common items*: The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the contractor, the contracting officer should consider the contractor's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on

hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination*: If, in a particular case, despite all reasonable efforts by the contractor, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the contractor to discontinue such costs shall be considered unallowable.

(c) *Initial costs, including starting load and preparatory costs, are allowable, subject to the following*:

(1) *Starting load costs* are costs of a non-recurring nature arising in the early stages of production and not fully absorbed because of the termination. Such costs may include the cost of labor and material, and related overhead attributable to such factors as—

(i) Excessive spoilage resulting from inexperienced labor,

(ii) Idle time and subnormal production occasioned by testing and changing methods of processing,

(iii) Employee training, and

(iv) Unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) *Preparatory costs* are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from costs reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) *Initial costs attributable to only one contract* shall not be allocated to other contracts.

(d) *Loss of useful value of special tooling, special machinery and equipment* is generally allowable, provided—

(1) Such special tooling, machinery or equipment is not reasonably capable of use in the other work of the contractor;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total

acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery and equipment was acquired.

(e) *Rental costs under unexpired leases* are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided, such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses* including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(i) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and

(ii) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(g) *Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor* are generally allowable.

§ 15.205-403 Trade, business, technical and professional activity costs.

(a) *Memberships*. This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions*. This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences*. This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

§ 15.205-44 Training and educational costs.

(a) *Costs of preparation and maintenance of a program of instruction at non-college level, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and*

(1) Salaries of the director of training and staff when the training program is conducted by the contractor; or

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(2) Tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) Costs of part-time education, at an under-graduate or post-graduate college level, related to the job requirements of bona fide employees, including only:

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours;

are allowable.

(c) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with fulltime scientific and engineering education at a post-graduate (but not under-graduate) college level related to the job requirements of bona fide employees for a total period not to exceed one school year for each employee so trained, are allowable. In unusual cases where required by military technology, the period may be extended.

(d) Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in §§ 15.205-20, 15.205-9, and 15.205-34, respectively.

(e) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships or fellowships, are considered contributions and are unallowable.

§ 15.205-45 Transportation costs.

Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see § 15.205-22). Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

§ 15.205-46 Travel costs.

(a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem

or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge.

(c) Travel costs incurred in the normal course of over-all administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing (see § 15.202).

(e) Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see § 15.107.)

Subpart C—Research Contracts With Educational Institutions

§ 15.301 General.

(a) It is the intent of these principles to provide Department of Defense agencies and educational institutions with a common basis for determining the allowable costs of research sponsored by the Federal Government. Application of these principles should enable such agencies and institutions to identify the allowable direct costs of such research, plus the allocable portion of the allowable indirect costs, less applicable credits. The tests of allowability of costs applied in these principles are reasonableness and allocability under consistently applied generally accepted cost accounting principles and practices; however, these provisions are subject to any limitations as to types or amounts of costs set forth in the research agreement.

(b) These principles do not attempt to identify the circumstances or dictate the extent of agency and institution participation in the financing of a particular research and development project, but rather are confined to the subject of cost determination. Arrangements concerning financial participation are properly the subject of negotiation between the contracting officer and the educational institution concerned.

(c) These principles should be applied to all Department of Defense sponsored research at an educational institution, including research conducted at locations other than the main campus of the institution.

(d) A negotiated fixed amount in lieu of indirect costs may be appropriate in certain instances for off-campus or segregated research projects where (1) research agreements are charged directly for the cost of many of their administrative or housekeeping services, or (2) the cost of benefits derived from an institution's indirect services cannot be readily determined by use of apportionment or allocation bases normally employed, or (3) the costs of apportioning and allocating expenses to research agreements are excessive. The negotiated amount should not exceed a conservative estimate of anticipated indirect costs.

§ 15.302 Definitions.

As used in this subpart, the following terms have the meanings stated in §§ 15.302-1 to 15.302-6.

§ 15.302-1 Research agreements.

"Research agreements" are agreements to perform Federally sponsored research through grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

§ 15.302-2 Apportionment.

"Apportionment" is the process by which the indirect costs of the institution are assigned to (a) instruction and research, and (b) other institutional activities.

§ 15.302-3 Allocation.

"Allocation" is the process by which the indirect costs apportioned to instruction and research are distributed to research agreements.

§ 15.302-4 Sponsoring agency.

"Sponsoring agency" means the Federal agency for which the institution is performing research. Its use in this document does not imply a change in concept or intent for those agencies that have traditionally used a grant rather than a contractual instrument.

§ 15.302-5 Original complement.

"Original complement" means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings. If a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement.

§ 15.302-6 Other institutional activities.

"Other institutional activities" means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, book stores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, financial campaigns, and other similar activities or auxiliary enterprises. Also included under this definition is any category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's general overhead expenses are properly allocable.

§ 15.303 Direct costs.

Direct costs are those identified as having been specifically incurred to perform a particular research agreement. The general types of direct costs are:

(a) "Direct salaries and wages", including employee benefit expenses and pension plan costs (see § 15.307) to the extent that they are consistently treated by the educational institution as a direct rather than an indirect cost, are those applicable directly to the performance of a research agreement. Such salaries and wages should be charged at the actual rates paid by the institution. Where professional staff paid on a salary basis work directly part time on a research agreement, current and reasonable estimates of time spent may be used in the absence of actual time records;

(b) "Direct material costs" include raw materials, purchased or supplied from stock, which are directly consumed or expended in the performance of a research agreement, or are otherwise applicable directly to a research agreement; and

(c) "Other direct costs" include other expenses related directly to a particular research agreement or project, including abnormal utility consumption. This may include services purchased from institution service operations, provided such are consistently treated as direct rather than indirect costs and are priced under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution. Purchases of equipment will be included under this heading only to the extent expressly provided for in the research agreement or approved pursuant to such agreement.

§ 15.304 Indirect costs.

Indirect costs are those which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs of research agreements or other activities. The general types of indirect costs are:

(a) "General administration and general expenses" are those incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any specific division of the institution. Employee benefit expenses and pension plan costs may be included in this category to the extent that they are consistently treated by the educational institution as an indirect rather than a direct cost;

(b) "Research administration expenses" are those which apply to research administered in whole or in part by a separate organization or an identifiable administrative unit. Examples of work relating to research which is sometimes performed under such organizational arrangement are: contract administration, security, purchasing, personnel administration, and editing and publishing of research data;

(c) "Operation and maintenance expenses" are those incurred for operating and maintaining the institution's physical plant. They include expenses normally incurred by the institution for administration or supervision of the physical plant; janitorial service; repairs and ordinary or normal alterations of buildings, furniture and equipment; care and maintenance of grounds; utilities; and other expenses customarily associated with the operation, maintenance, preservation and protection of the physical plant;

(d) "Library expenses" are those incurred for direct operation of the library plus a use allowance for library books. The use allowance shall not exceed eight cents per volume per year;

(e) "Use allowance" is a means of compensation for the use of buildings, capital improvements, and equipment over and above the expenses for operation and maintenance when depreciation or other equivalent costs are not consid-

ered. The use allowance for buildings and improvements shall be computed at an annual rate not to exceed two percent (2%) of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent (6 $\frac{2}{3}$ %) of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance shall be computed at an annual rate not exceeding ten percent (10%) of such cost. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent (6 $\frac{2}{3}$ %) of such estimate. Computation of the use allowance shall exclude the portion of the cost of buildings and equipment paid for out of Federal funds and the cost of grounds; and

(f) "Indirect department expenses" are those incurred for departmental administration, such as salaries of deans or heads of colleges, schools, departments or divisions, and related secretarial and other administrative expenses.

§ 15.305 Applicable costs.

(a) The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits.

(b) When any types of expense ordinarily treated as indirect costs are charged to a research agreement as direct costs, the costs of similar items applicable to other activities of the institution must be eliminated from indirect costs allocable to the research agreement.

(c) Where a particular understanding has been reached regarding specific items of cost to be reimbursed, the research agreement should clearly state such understanding.

(d) Section 15.307 provides standards to be applied in determining the allowability of certain items of cost and also identifies certain types of expenditures which relate solely to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs; such costs of instruction shall be excluded from the computations provided herein.

§ 15.306 Determination of indirect costs.

§ 15.306-1 General.

(a) In determining the indirect costs applicable to Federally sponsored research agreements, the allowable indirect costs should first be apportioned equitably between (1) instruction and research activity and (2) other institutional activities, as provided in § 15.306.2.

(b) The amounts of indirect costs apportioned to instruction and research should then be allocated in an equitable manner to research agreements, as provided in § 15.306-3.

(c) Actual conditions must be taken into account in determining the most suitable method or methods to be used in the apportionment and allocation of indirect costs. The objective should be the selection of a method or methods which will distribute the indirect costs in a fair and equitable manner to the Government research and development work and other work of the institution, giving due consideration to the nature and extent of the use of the institution's facilities by research personnel, academic staff, students and other personnel or activities, and to the materiality of the amounts involved. The methods used should conform with generally accepted cost accounting practices, provide uniformity of treatment for like cost elements, be applied consistently, and produce equitable results. Any significant change, such as in the nature or extent of Government work or other activities sponsored or conducted by the institution, may require reconsideration of the methods previously in use to determine whether they continue to be equitable.

§ 15.306-2 Apportionment.

Where indirect costs relate to research, instruction, and other activities, such indirect costs shall be apportioned as between instruction and research activities, and other institutional activities as defined in § 15.302-6. The apportionment shall be made as follows:

(a) General administration and general expenses, on the basis of total expenditures: if more appropriate in the circumstances, however, other bases may be used;

(b) Operation and maintenance of the physical plant, if not separately costed, on the basis of total square or cubic footage of the buildings; and

(c) Other types of indirect costs normally do not require apportionment, where they do, an equitable basis for making the apportionment should be selected.

§ 15.306-3 Allocation.

(a) After determination of the total amount of indirect costs applicable to instruction and research activities, such indirect costs shall in turn be allocated between instruction activities and research agreements as described in paragraphs (b), (c), (d), and (e) of this section.

(b) The following criteria should be used with such appropriate modifications as will under the circumstances produce reasonably equitable allocation of the indirect costs associated with research agreements:

(1) "General administration and general expenses" should normally be allocated on the basis of total expenditures (exclusive of capital expenditures and use allowances) if equitable, direct salaries and wages, or other bases appropriate in the circumstances;

(2) "Research administration expenses" should be allocated to (i) applicable research agreements and (ii) other research benefiting therefrom on the basis of records reflecting the proportion fairly applicable to each or, in

the absence of such records, on the basis of a reasonable estimate;

(3) "Operation and maintenance expenses" should be allocated on a basis that gives primary emphasis to space utilization. The amount allocated may be developed as follows:

(i) Where actual space and related cost records are or can readily be maintained without significant change in the accounting practices, the amount allocated to research agreements should be based on such data;

(ii) Where the space and related cost records maintained are not sufficient for purposes of subdivision (i) of this subparagraph, a reasonable estimate of the proportion of total space assigned to research agreements normally will suffice, and this proportion of operation and maintenance expense should be allocated to research agreements. Where it can be established that the cost of maintaining space assigned to research varies significantly from the cost of maintaining other space, appropriate weighting factors may be used to give effect to such variations;

(iii) Where more definitive information is not available, either of the following simplified techniques for determining space may be used, as most appropriate—

(a) Reduce the total space identified with instruction and research by the amount of space occupied by undergraduate students, including appropriate portions of classrooms and access and related space. Reduce by the same proportion the amount of maintenance and operation expense that has been apportioned to instruction and research, and then allocate to research agreements on the basis of the relationship that direct salaries and wages of research agreements bears to direct salaries and wages of instruction and research; or

(b) Prepare a reasonable estimate of the average gross space assigned per research worker, and extend to the equivalent annual number of research workers under research agreements. The resulting product should then be related to total space assigned to instruction and research in order to obtain the proportion of space utilized for research agreements. The resulting proportion should then be applied to operation and maintenance expense to obtain the amount allocable to research agreements; or

(c) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students;

(4) "Library expenses" should normally be allocated to research agreements on the basis of population including students and other users. Where appropriate, consideration may be given to weighting segments of the population figures as necessary to produce equitable results;

(5) "Use allowance for buildings and equipment" should, if depreciation or other equivalent costs are not considered, be computed in accordance with

§ 15.304(v). The cost of buildings and equipment used by "other institutional activities" (as defined in § 15.302-6) should be excluded from any computation of use allowances. If available records permit, use allowances may be specifically allocated in whole or in part to research agreements. In the absence of such usable records, use allowance may be allocated to research agreements on the same basis as that used for allocating operation and maintenance expenses; and

(6) "Indirect departmental expenses:" the salaries and wages of departmental heads and their offices, including the allocated portion of deans of schools and their offices, which jointly benefit both research agreements and other activities should be allocated between research agreements administered or supervised by the department and other work of the department on any equitable basis, possibly direct salaries and wages, total direct expenditures, or approximate time so devoted. Where equitable results would be obtained, the distribution may be made on a composite base which would include all schools and departments.

(c) Indirect costs allocated to research agreements normally should be treated as a common pool. The costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis. This rate will be the percentage which the indirect cost pool is of direct salaries and wages of the applicable research agreements. If appropriate, total direct expenditures may be used rather than salaries and wages.

(d) It is recognized that in certain cases, due to the nature of the work, the facilities or personnel involved, or other considerations, the application of a single indirect expense rate on research agreements may produce inequitable results to the institution or to the Government. In such cases, it may be necessary to develop two or more indirect expense rates by means of: (1) Appropriate adjustment to the basic indirect expense rate developed through use of the common pool, or (2) segregation of the indirect expenses allocated to research agreements into two or more indirect expense pools. In the latter case, the costs in each such pool will be distributed to the specific research agreements benefiting therefrom on the basis of direct wages and salaries or total direct expenditures, as appropriate. Examples of conditions which may justify the development of two or more pools of indirect expense are:

(i) Where the nature of a particular type of overhead cost requires a different basis of allocation to produce equitable results;

(ii) Where a research agreement or group of agreements or the facility in which such agreement(s) is performed provides its own services to a significant degree, as may be in the case of a hospital or a segregated or off-campus facility;

(iii) Where a research agreement requires significantly different degrees of indirect services from the institution.

For example, such conditions may exist where: (a) Significant amounts of Government-owned facilities or equipment are provided in lieu of that normally furnished by the institution, (b) a research agreement requires an unusual amount of power or other utilities, (c) the cost of a special library provided in lieu of regular library services is reimbursed by the Government, or (d) construction constitutes a significant portion of the work; and

(iv) Where it is appropriate to associate certain costs more directly with the activities benefited, such as where the research work is performed on one campus of a multicampus university.

(e) Where research is separately administered, in whole or in part, or separate services are provided in lieu of those services normally provided by the institution, the cost of the normal institutional administration or other services replaced thereby shall be excluded from allocation to such research.

§ 15.306-4 Overhead determinations acceptable under special circumstances.

(a) Indirect costs may be claimed at a rate which is anticipated to be less than that which would otherwise be allowable with provisions made in the research agreement for adjustment if actual costs subsequently proved to be less than the claimed rate.

(b) The degree of preciseness required in the computation of indirect costs will be influenced by considerations such as the materiality of the amounts involved, the size of the educational institution, and the aggregate dollar volume of Government-sponsored research at the institution. Generally, where the total direct cost of Government-sponsored research and development work at an institution does not exceed \$250,000 in a year, the use of abbreviated procedures in the determination of allowable indirect costs may be acceptable when the results obtained are equitable. For example, educational institutions which have a relatively small dollar volume of Government-sponsored research may compute allowable indirect expenses on the basis of data available in the institution's financial reports. One permissible method in such cases would contemplate the use of a single indirect expense pool composed of:

(1) General and administrative expenses, exclusive of unallowable costs (§ 15.307), but inclusive of allocable salaries and expenses of deans of schools and department heads;

(2) Operation and maintenance expenses; and

(3) Library expenses.

The indirect expense pool should then be allocated to research agreements and other activities of the institution on any equitable basis, possibly total expenditures (exclusive of capital expenditures).

§ 15.307 General standards for selected items of cost.

§ 15.307-1 Purpose and applicability.

(a) Section 15.307 provides standards to be applied to the extent deemed practicable in determining the allowability of certain items of cost. These stand-

ards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards should not imply that it is either allowable or unallowable; rather determination as to allowability in such case should be based on the treatment or standards provided for similar or related items of cost.

(b) In case of discrepancy between the provisions of a specific research agreement and the applicable standards, the provisions of the research agreement should govern.

§ 15.307-2 Costs applicable to instruction.

Except as specifically noted, the following types of costs apply only to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs, unless specific provision is made therefor in the research agreement:

(a) Commencement and convocation costs;

(b) Sabbatical leave costs, including leave of absence to employees for performance of graduate work or sabbatical study, travel, or research;

(c) Scholarships, fellowships, tuition and other forms of student aid costs. However, in certain cases such costs may be allocable in part to research agreements under the conditions set forth in § 15.307-3; and

(d) Student services costs, including such activities as deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services. However, in the case of students actually engaged in work under research agreements, a proportion of student service costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

§ 15.307-3 Allowable and unallowable costs.

(a) Advertising costs include the cost of advertising media and related technical and administrative costs. Only the following advertising costs are allowable: (1) Help wanted advertising, (2) other advertising necessary for the performance of the research agreement to the extent authorized.

(b) Bad debts including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs are unallowable.

(c) Capital expenditures are unallowable except as provided for in the research agreement. This includes costs of books, equipment and buildings, as well as repairs which materially increase the value or useful life of such equipment or buildings.

(d) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal

plant protection costs, first aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when apportioned to all activities of the institution. Capital expenditures for civil defense purposes shall not be allowed, but a use allowance may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

(e) Communication costs including telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

(f) Compensation for personal services: Each institution shall maintain control over its salary and wage rates according to its established policy consistently applied: *Provided, however*, That the excess of salary and wage rates paid to personnel working on Government research agreements over salary and wage rates paid to personnel working on the institution's departmental research or other research will not be allowed unless specifically provided in the agreement or approved by the contracting officer. This principle does not prohibit the charging of the full salary of any temporary employee in whose favor a salary differential exists solely by virtue of the nature of his employment in accordance with the regular practice of the institution concerned. Faculty members shall be considered as employed for the period represented by the sum of all semesters and other periods during which they are required to work under the practice of the institution concerned. (Example: Professor of X institution is required to work two semesters of 4½ months each, or a total of nine months out of the academic year. His compensation is \$5,400.00. During the summer months, July, August, and September, he works full time on Government research projects in the institution laboratory. Unless the established practice of the institution relating to summer compensation, not based on Government contract experience, would result in a different computation, his compensation for that period, chargeable by the institution to the Government research agreement, will be \$1,800.00, computed as follows: (\$5,400.00 ÷ 9 = \$600.00; \$600.00 multiplied by 3 = \$1,800.00).

(g) Contingency provisions to provide for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

(h) Deans of faculty and graduate schools, or their equivalents, including their staffs and related expenses are allowable.

(i) Employee morale, health, and welfare costs and credits, such as house publications, health or first aid clinics and/or infirmaries, recreational activities, and employees' counseling services, incurred in accordance with the institution's established practice or custom for the improvement of working conditions,

employer-employee relations, employee morale, and employee performance, are allowable. Such costs shall be equitably apportioned to all activities of the institution. Income generated from any of these activities shall be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organization.

(j) Entertainment costs including costs of amusement, social activities, entertainment, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

(k) Equipment and other facilities: The cost of equipment or other facilities, including books purchased specifically for use on the project, are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

(l) Fines and penalties: Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the contracting officer.

(m) Insurance and indemnification:

(1) Insurance includes those types of insurance which the institution is required to carry, or which is approved, under the terms of the research agreement, and any other insurance which the institution maintains in the general conduct of its activities. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise.

(2) Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

(3) Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

(i) Types and extent and cost of coverage shall be in accordance with sound institutional practice;

(ii) Costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government shall have required or approved such costs;

(iii) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks;

(iv) Costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted; and

(v) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except: (a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound

business practice are allowable; and (b) minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(n) Interest costs for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(o) Investment counsel and staff costs are unallowable.

(p) Labor relations costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

(q) Losses on other research agreements or contracts. Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for overhead.

(r) Maintenance and repair costs necessary for the upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

(s) Material costs of purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

(t) Memberships, subscriptions, and professional activity costs: (1) Membership costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

(2) Subscription costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable, excepting those obtained for the library for which a use allowance is made.

(3) Meetings and conferences. This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such

costs is the dissemination of technical information. Such costs are allowable.

(u) Patent costs: Costs of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph (ff) of this section.)

(v) Pension plan costs are allowable if in accordance with the established policies of the institution, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

(w) Plant security costs including wages, uniforms and equipment of personnel engaged in plant protection, and necessary expenses to comply with Government security requirements, are allowable.

(x) Preresearch agreement costs are those which are incurred prior to the effective date of the research agreement whether or not they would have been allowable thereunder if incurred after such date. Such costs are unallowable unless specifically set forth and identified in the research agreement.

(y) Professional service costs; legal, accounting, engineering and other.

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to subparagraphs (2) and (3) of this paragraph, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include:

(i) The past pattern of such costs, particularly in the years prior to the award of Government research agreements;

(ii) The impact of Government research agreements on the institution's total activity;

(iii) The nature and scope of managerial services expected of the institution's own organization; and

(iv) Whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

(3) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, and the prosecution of claims against the Government, are

unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

(z) Profits and losses on disposition of plant, equipment, or capital assets. Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

(aa) Proposed costs are the costs of preparing bids or proposals on potential Government and non-Government research agreement or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods shall be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

(bb) Public information services costs such as news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

(cc) Rearrangement and alteration costs: Ordinary or normal rearrangement and alteration costs are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

(dd) Reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted. Reconversion costs are allowable, only to the extent of the cost of removing Government property and the restoration or rehabilitation costs caused by such removal.

(ee) Recruiting costs such as "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment, are allowable. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond recognized practices for recruiting such personnel are unallowable.

(ff) Royalties and other costs for use of patents. Royalties on a patent or amortization of the cost of acquiring a

patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent has expired.

(gg) Severance pay is a payment, in addition to regular salaries and wages, by institutions to employees whose services have been terminated. Severance pay is allowable as a cost only to the extent that it is required by law, employer-employee agreement, established policy that constitutes in effect an implied agreement on the institution's part, or circumstances of the particular employment. Severance payments are divided into two categories as follows:

(1) Those due to normal, recurring turnover. The actual costs of such severance payments shall be regarded as expense applicable to the current fiscal year and equitably apportioned to the institution's activities during that period; and

(2) Those due to abnormal or mass terminations. Abnormal or mass severance pay is of such a conjectural nature that measurement of cost by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(hh) Special services costs, such as general public relations activities, catalogs, and alumni activities, are unallowable.

(ii) Staff benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of such staff benefits are allowable and include vacations, holidays, sick leave, military leave, employee insurance, social security taxes and workmen's compensation insurance. The payment of tuition or remission of tuition for employees and their families are allowable to the extent that such payments or remissions are made under established policies consistently applied.

(jj) Taxes: In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(1) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) Special assessments on land which represent capital improvements.

Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, shall be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

(kk) Transportation costs: Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be direct costed as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

(ll) Travel costs: (1) Travel costs consist of transportation, lodging subsistence, and incidental expenses.

(2) Travel costs incurred by institution personnel in a travel status while on specific research business are allowable.

(3) Travel costs incurred in the normal course of over-all administration of the institution and applicable to the entire institution are allowable. Such costs shall be equitably apportioned to all work of the institution.

(4) Subsistence and lodging, including tips or similar incidental costs, are allowable either on an actual or per diem basis. The basis selected shall apply to an entire trip and not selected days of the trip.

(5) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

(mm) Termination costs: (1) Contract termination generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this subpart in the case of contract termination.

(2) The cost of common items of material reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution shall be regarded as evidence that

such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(3) If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unacceptable.

(4) Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided:

(i) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(ii) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery, and equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated cost, less the residual value of such leases, if:

(i) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable, and

(ii) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract; and

(b) The termination and settlement of subcontracts; and

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(7) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other

work of the contractor are generally allowable.

Subpart D—Construction Contracts

§ 15.401 Definition of construction contract.

The term "construction contract" as used in this subpart means any contract for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It does not include a contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 15.402 General basis for determination of costs.

The total cost of a cost-reimbursement type contract for construction or for architect-engineer services related to construction is the sum of the allowable costs incident to the performance of the contract, less applicable income and other credits. The tests used in determining the allowability of costs also include (a) reasonableness and (b) any limitations as to types or amounts of cost items set forth in this subpart or otherwise included in the contract. Failure to mention any item of cost in this subpart is not intended to imply that it is either allowable or not allowable. Income and other credits arising out of operations under the contract, where the related cost was reimbursed or accepted as an allowable cost, will be credited to the Government.

§ 15.403 Examples of items of allowable costs.

Subject to the requirements of § 15.402 with respect to the general basis for determining allowability of costs, the following items of cost are considered allowable within the limitations indicated:

- (a) Bonds and insurance, including self-insurance, to the extent authorized by the contracting officer;
- (b) Camp operations (but see § 15.404 (h));
- (c) Freight, transportation, and material handling;
- (d) Land and structures, temporary use thereof;
- (e) Materials and supplies, including inspection, storage, salvage, and other usual expenses incident to the procurement and use thereof;
- (f) Patents, purchased designs, and royalty payments, to the extent authorized by the contracting officer;
- (g) Plant and equipment, purchase or rental thereof;
- (h) Recruiting of personnel (including "help wanted" advertising);
- (i) Restoration and cleanup of site and facilities, as directed by the contracting officer;
- (j) Structures and facilities of a temporary nature;
- (k) Subcontracts;
- (l) Taxes, fees or charges, except those imposed upon, by reason of, or measured by the contractor's fee;

(m) Traveling expenses, to the extent authorized by the contracting officer;

(n) Utility services, such as communication, power, gas, and water;

(o) Vacation, holiday and severance pay, sick leave and military leave, to the extent required by law or specifically provided for elsewhere in the contract;

(p) Wages and salaries; and

(q) Pension and retirement plans in accordance with the interpretation set forth in § 15.406 and group health, accident and life insurance plans (but see § 15.404 (b), (d), and (m)).

§ 15.404 Examples of items of unallowable costs.

The following items of costs are considered unallowable, except as indicated and then only subject to the requirements of § 15.402:

(a) Advertising (including advertising in trade or technical journals), except "help wanted" advertising;

(b) Central office expenses of the contractor, such as supplies, equipment, rent, or any other expenses incident to its maintenance and operation, except to the extent authorized by the contracting officer;

(c) Commissions and bonuses (under whatever name) in connection with obtaining or negotiating for a Government contract;

(d) Compensation and traveling expenses of any officer or employee in the central office organization of the contractor, except to the extent authorized by the contracting officer;

(e) Contingency reserves;

(f) Contributions and donations;

(g) Dividend payments;

(h) Entertainment, except for on-site recreational activities for the contractor's employees as authorized by the contracting officer;

(i) Interest on borrowings (however represented), bond discount and expense, and financial charges;

(j) Legal, accounting and consulting fees and related expenses, except to the extent authorized by the contracting officer;

(k) Losses on other contracts;

(l) Memberships in trade, business, and professional organizations;

(m) Premiums for insurance on the lives of directors, officers, proprietors, or other persons, where the contractor is the beneficiary directly or indirectly;

(n) Storage of contract records after completion of contract operations, irrespective of contractual or statutory requirements regarding the preservation of records; and

(o) Taxes, fees, or charges imposed upon, by reason of, or measured by the contractor's fee.

§ 15.405 Examples of subjects requiring special considerations.

The following examples are illustrative of subjects affecting cost which may require special consideration:

(a) Costs incurred incidental to work covered by the contract but prior to the execution of the contract, with specific identification of the types thereof and the period involved;

(b) Government-furnished property, general nature and extent;

(c) Indirect cost basis (1) actual, (2) negotiated rate or amount, or (3) other;

(d) Insurance;

(e) Intracompany and intercompany transactions;

(f) Liability to third persons;

(g) Operation of restaurants and cafeterias;

(h) Overtime compensation (see § 12.102 of this chapter);

(i) Patents, purchased designs, and royalty payments;

(j) Personnel movement of a special or mass nature;

(k) Plant facilities fully depreciated or amortized on the contractor's books of account or acquired without cost (possible compensation for utilization in the form of a use or rental charge);

(l) Rearrangement or relocation of facilities or plant sites;

(m) Research programs of a general nature;

(n) Security measures of a special nature;

(o) Sharing of cost of research projects of the type which an educational or other nonprofit institution might undertake as a part of its own educational or research program;

(p) Subcontracting, nature and extent thereof and relation to fee or profit;

(q) Subsistence and housing of employees;

(r) Termination expenses;

(s) Tooling and equipment;

(t) Traveling expenses of a special or unusual nature; and

(u) Wages or salaries of partners or sole proprietors.

§ 15.406 Cost interpretation of pension and retirement plans.

(See § 15.403 (q).)

(a) Costs of pension and retirement plans, including reasonable incidental benefits, such as disability, withdrawal, insurance or survivorship allowances which are deductible from taxable income in accordance with the Internal Revenue Code and the regulations of the Bureau of Internal Revenue, are allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation. Costs of such plans established by nonprofit or other organizations not subject to payment of Federal income taxes are also allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation.

(b) Pension or retirement plans of a contractor which are subject to approval of the Bureau of Internal Revenue must have been so approved before costs under the plans may be accepted as charges to Government contracts. Many plans of nonprofit or other tax exempt organizations are also reviewed and approved by the Bureau of Internal Revenue—when not so reviewed and approved, each such plan will be reviewed, and approved or disapproved, by the Department to which audit cognizance is assigned, using, insofar as applicable, the criteria and standards of the Internal Revenue Code and the regulations of the Bureau

of Internal Revenue. In any case where the Bureau of Internal Revenue withdraws approval of a plan, approval of amounts allocated to contract costs will be withdrawn accordingly.

(c) The approval of a pension or retirement plan by the Bureau of Internal Revenue will, as a general rule, be the only approval required by the Department; however, the right is reserved to require submission of any plan for consideration by a Department and to disapprove such plan in its entirety or any feature thereof whenever the circumstances in a particular case are deemed to warrant such action. Such consideration will be the responsibility of the Department to which audit cognizance is assigned, and the subsequent action taken by that Department will generally be accepted by the other Departments.

(d) Approval of a pension or retirement plan by the Bureau of Internal Revenue or by the Departments does not imply that the cost thereof for any particular year will be allowable for apportionment to contract costs, except to the extent costs for that year meet all other requirements of the Bureau of Internal Revenue as a deduction for income tax purposes, and are acceptable under the provisions of this cost interpretation and other provisions of this Section.

(e) Pension and retirement costs constitute a part of the total compensation by a contractor to any individual covered by the plan, and accordingly, are subject to the provisions of this Section with respect to reasonableness of the total compensation paid to the individual for the services rendered.

(f) Where contributions to pension or retirement plans are based on profits: *Providing*, That provisions of the Internal Revenue Code and regulations of the Bureau of Internal Revenue have been met, the amount allowable for apportionment to contracts in any one year shall be the amount contributed to the pension trust(s) for that year, but not to exceed 15 percent of the total compensation otherwise paid or accrued in that year to the individuals covered under the plan(s).

(g) The allowability of costs of lump sum purchases of annuities or of periodic cash payments made to provide pension or retirement benefits for retiring or retired employees, other than incurred under approved pension or retirement plans, will be subject to consideration on an individual case basis.

(h) Credits which became available or are foreseeable must be taken into account in an equitable manner in determining pension and retirement costs subject to apportionment to a military contract. In some instances, this may require adjustments to costs in anticipation of the realization of credits. For example, such action would normally be appropriate where contractors' organizations are substantially expanded for the performance of military contracts and there is a reasonable expectation that, upon completion of the contracts, the services of practically all or a large number of the additional employees will be terminated with the result that contractors will benefit from contributions

made on behalf of these employees, because such personnel will not acquire vested rights under the terms of the plans.

(i) In any current or future contract no cost allowance will be made which would duplicate, in whole or in part, an allowance previously made under a prior contract.

Subpart E—[Reserved]

Subpart F—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

§ 15.600 Scope of subpart.

This subpart provides guidance for the use of Subparts B, C, and D of this part (a) in the evaluation of costs in pricing of negotiated fixed-price type contracts and subcontracts in those instances where such evaluation is required to establish prices for such contracts and (b) in the negotiation of termination settlements.

§ 15.601 Definition of fixed-price type contracts.

"Fixed-price type" contracts include, for purpose of this chapter, the following:

- (a) Firm fixed-price contracts (§ 3.403-1 of this chapter)
- (b) Fixed-price contracts with escalation (§ 3.403-2 of this chapter)
- (c) Fixed-price contracts providing for the redetermination of price (§ 3.403-3 of this chapter)
- (d) Fixed-price incentive contracts (§ 3.403-4 of this chapter)
- (e) Non-cost-reimbursable portion of time and materials contracts (§ 3.405-1 of this chapter)
- (f) Labor-hour contracts (§ 3.405-2 of this chapter)

§ 15.602 Basic considerations.

(a) Under fixed-price type contracts, the negotiated price is the basis for payment to a contractor whereas allowable costs are the basis for reimbursement under cost-reimbursement type contracts. Accordingly, the policies and procedures of Subpart H, Part 3, of this chapter, are governing and shall be followed in the negotiation of fixed-price type contracts. Cost and accounting data may provide guides for ascertaining fair compensation but are not rigid measures of it. Other types of data, criteria, or standards may furnish reliable guides to fair compensation. The ability to apply standards of business judgment as distinct from strict accounting principles is at the heart of a negotiated price or settlement.

(b) Among the different types of fixed-price type contracts, the need for consideration of costs varies considerably as indicated below:

(1) *Retrospective pricing and settlements.* In negotiating firm fixed prices or settlements for work which has been completed at the time of negotiation (e.g., final negotiations under fixed-price incentive contracts, redetermination of price after completion of the work, or negotiation of a settlement

agreement under a contract terminated for the convenience of the Government), the treatment of costs is a major factor in arriving at the amount of the price or settlement. However, even in these situations, the finally agreed price or settlement may represent something other than the sum total of acceptable costs plus profit, since the final price accepted by each party does not necessarily reflect agreement on the evaluation of each element of cost, but rather a final resolution of all issues in the negotiation process.

(2) *Forward pricing.* The extent to which costs influence forward pricing varies greatly from case to case. In negotiations covering future work, actual costs cannot be known and the importance of cost estimates depends on the circumstances. The contracting officer must consider all the factors affecting the reasonableness of the total proposed price, such as the technical, production or financial risk assumed, the complexity of work, the extent of competitive pricing, and the contractor's record for efficiency, economy and ingenuity, as well as available cost estimates. He must be free to bargain for a total price which equitably distributes the risks between the contractor and the Government and provides incentives for efficiency and cost reduction. In negotiating such a price, it is not possible to identify the treatment of specific cost elements since the bargaining is on a total price basis. Thus, while cost data is often a valuable aid, it will not control negotiation of prices for work to be performed, or a target price under an incentive contract.

§ 15.603 Cost principles and their use.

(a) When, pursuant to § 15.602, costs are to be considered in the negotiation of fixed-price type contracts, the appropriate subpart of this part shall be used as a guide in the evaluation of cost data required to establish a fair and reasonable price in conjunction with other pertinent considerations as set forth more fully in Subpart H, Part 3, of this chapter, and—in the case of negotiated termination settlements—Subpart C, Part 3 of this chapter.

(b) In retrospective pricing, whenever an occasion arises in which acceptability of a specific item of cost becomes an issue, the appropriate part of this Part 15 will serve as a guide for the contracting officer in his conduct of negotiations.

(c) In applying this part to fixed-price contracts, contracting officers will: (1) Not be expected to negotiate agreement on every individual element of cost; and (2) be expected to use their judgment as to the degree of detail in which they consider the individual elements of cost in arriving at their evaluation of total cost, where such evaluation is appropriate. However, the negotiation record should fully substantiate and justify the reasoning leading to any negotiated price.

(d) In order to permit the proper evaluation of cost data submitted by contractors for use in negotiating prices, it may be necessary to obtain breakdowns or account analyses in respect to some cost items particularly those whose treatment may be dependent upon special circum-

stances as stated in the principles. Contractors will be expected to be responsive to reasonable requests for data of this kind.

G. C. BANNERMAN,
Director of Procurement Policy,
Office of Assistant Secretary
of Defense (Supply &
Logistics).

DECEMBER 21, 1959.

[F.R. Doc. 59-10974; Filed, Dec. 23, 1959;
8:50 a.m.]

Chapter V—Department of the Army
SUBCHAPTER F—PERSONNEL
PART 571—RECRUITING AND
ENLISTMENTS

Miscellaneous Amendments

1. In § 571.2, amend paragraphs (a) (3) and (6) and (f) (2) to read as follows:

§ 571.2 Qualifications for enlistment and reenlistment.

(a) *Age requirements.* * * *

(3) *Prior service personnel.* Thirty-five years and over but less than 55 years, provided:

(i) Applicants have a minimum of 3 years honorable active service in any of the Armed Forces at least 3 months of which must have been served in the Army or Army Air Corps, and

(ii) Applicants age is not greater than 35 plus the number of completed years of prior honorable active Federal service. (For women, count only honorable active service since September 1, 1943.)

(6) *Restriction.* Applicants who cannot acquire the necessary minimum active Federal service to qualify for retirement by age 60 may not be enlisted or reenlisted unless such individuals are entitled by law to enlist or reenlist. However, request for waiver of the foregoing provisions may be submitted through the Commanding Officer, U.S. Army Records Center, 9700 Page Boulevard, St. Louis 32, Mo., to The Adjutant General in those cases in which it is determined that there is an implied or actual moral obligation based on the circumstances of the individual case. Request for waivers, with reason(s) therefor, should be made sufficiently in advance of separation to permit continuous service, since this waiver provision is applicable only to in-service personnel.

(f) *Classes ineligible to enlist or reenlist—no waivers granted.* * * *

(2) *Applicants against whom criminal charges are pending.* Persons who have criminal charges filed and pending against them alleging a violation of State, Federal, or territorial statute. Included in this category are persons who are released from the custody or restraint of a court under procedures which on the face thereof do not appear

to dispose of the charges, finally (e.g., release following a plea of any type to the court (including plea of guilty or nolo contendere); release on probation without a verdict; release on a person's own recognizance; release following charges that are placed on file; or any similar disposition, without regard to the technical name therefor, which indicates that the person may remain subject to further judicial proceedings in connection with the charges), unless the official chiefly responsible for prosecution of the charges (e.g., District Attorney), the judge of the court involved, or a higher official of the jurisdiction concerned having responsibilities in connection with the case, submits a signed statement to the effect that under the laws of the jurisdiction the applicant is not subject to further restraint, custody, control or prosecution by the authorities thereof by virtue of the disposition of the charges against the applicant. Also included in this category are persons who, as an alternative to further prosecution, indictment, trial, or incarceration in connection with the charges, or to further proceedings relating to adjudication as a youthful offender or juvenile delinquent, are granted a release from the charges at any stage of the court proceedings on the condition that they will apply for or be accepted for enlistment in the Regular Army.

2. Paragraph (b) of § 571.3 is amended to read as follows:

§ 571.3 Periods of enlistment.

* * * * *

(b) *Two-year enlistments.* An enlistment of 2 years is authorized for:

(1) Women who have had no prior Regular Army enlisted service.

(2) Men without prior service who are registered with Selective Service and who:

(i) Are between the ages of 18 years 6 months and 26 years. (Proof of age is mandatory.)

(ii) Have not received orders to report for induction.

(iii) Enlist for Regular Army, unassigned.

[CI, AR 601-210, 17 November 1959] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-10910; Filed, Dec. 23, 1959;
8:45 a.m.]

Chapter VI—Department of the Navy
SUBCHAPTER C—PERSONNEL
PART 725—DISPOSITION OF CASES
INVOLVING PHYSICAL DISABILITY

Appointment to Membership on
Physical Evaluation Board

Scope and purpose. Section 725.405 (24 F.R. 6422) is amended to conform

with a recent revision of departmental regulations.

1. Paragraph (b) of § 725.405 is revised to read as follows:

(b) Appointment to membership on a physical evaluation board shall constitute a primary duty or significant collateral duty of the officers so assigned. Although alternate members may and should be appointed, the number thereof should be kept to a minimum consistent with the expeditious processing of physical evaluation board cases and with the maintenance of continuity in members. The use of alternate members should be reserved for cases where the regular members are unavoidably absent.

(Secs. 1216, 5031, 6011, 70A Stat. 100, as amended; 10 U.S.C. 1216, 5031, 6011)

By direction of the Secretary of the Navy.

[SEAL] CHESTER WARD,
Rear Admiral, U.S. Navy, Judge
Advocate General of the
Navy.

DECEMBER 21, 1959.

[F.R. Doc. 59-10954; Filed, Dec. 23, 1959;
8:50 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 10—GENERAL REGULATIONS RELATING TO DEFINITIONS AND STANDARDS FOR FOOD

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTI-BIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 164—CERTIFICATION OF BATCHES OF DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

Additions and Amendments to Cross-References

1. The following cross-reference is inserted immediately following § 3.12:

CROSS REFERENCE: For specific regulations concerning food additives in standardized food, see § 121.8 of this chapter.

2. Preceding § 10.1 the following cross-references are inserted:

CROSS REFERENCES: For other regulations in this chapter concerning definitions and standards for foods, see also §§ 1.13, 1.14, 3.1, 3.12, 3.17, 3.36, and 121.8.

3. Preceding § 120.1, the following cross-references are inserted:

CROSS REFERENCES: For other regulations in this chapter concerning tolerances and exemptions from tolerances for pesticide chemicals, see also §§ 3.47 and 121.2.

4. The cross-references preceding § 130.1 are changed to read as follows:

CROSS REFERENCES: For other regulations in this chapter concerning new drugs, see also §§ 1.106 (g), (k), and (l), 3.45, 3.511, 3.512, and 121.7.

5. The cross-references preceding Part 146 are changed to read as follows:

CROSS REFERENCES: For other regulations in this chapter concerning antibiotic and antibiotic-containing drugs, see also §§ 3.15, 3.29, 3.30, 3.37, 3.501, 3.504, 3.507, and Part 121.

6. Preceding § 164.1, the following cross-references are inserted:

CROSS REFERENCES: For other regulations in this chapter concerning insulin drugs, see also §§ 1.115, 3.501, and 3.507.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371)

Dated: December 16, 1959.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 59-10936; Filed, Dec. 23, 1959; 8:48 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 27—CANNED FRUITS AND CANNED FRUIT JUICES; DEFINITIONS AND STANDARDS OF IDENTITY; QUALITY; AND FILL OF CONTAINER

Republication of Part

Part 27 is republished below for the purpose of incorporating therein all the amendments made subsequent to the recodification of Title 21. Some editorial revisions have been made for the purpose of shortening the text; no substantive changes have been made.

Dated: December 16, 1959.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

- Sec. 27.1 Definitions.
- 27.2 Canned peaches; identity; label statement of optional ingredients.
- 27.3 Canned peaches; quality; label statement of substandard quality.
- 27.4 Canned peaches; fill of container; label statement of substandard fill.
- 27.5 Canned peaches with rum; identity; label statement of optional ingredients.
- 27.6 Artificially sweetened canned peaches; identity; label statement of optional ingredients.
- 27.10 Canned apricots; identity; label statement of optional ingredients.
- 27.11 Canned apricots; quality; label statement of substandard quality.

- Sec. 27.12 Canned apricots; fill of container; label statement of substandard fill.
- 27.13 Canned apricots with rum; identity; label statement of optional ingredients.
- 27.14 Artificially sweetened canned apricots; identity; label statement of optional ingredients.
- 27.20 Canned pears; identity; label statement of optional ingredients.
- 27.21 Canned pears; quality; label statement of substandard quality.
- 27.22 Canned pears; fill of container; label statement of substandard fill.
- 27.23 Canned pears with rum; identity; label statement of optional ingredients.
- 27.24 Artificially sweetened canned pears; identity; label statement of optional ingredients.
- 27.30 Canned cherries; identity; label statement of optional ingredients.
- 27.31 Canned cherries; quality; label statement of substandard quality.
- 27.32 Canned cherries; fill of container; label statement of substandard fill.
- 27.33 Canned cherries with rum; identity; label statement of optional ingredients.
- 27.34 Artificially sweetened canned cherries; identity; label statement of optional ingredients.
- 27.40 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; identity; label statement of optional ingredients.
- 27.41 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; quality; label statement of substandard quality.
- 27.42 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; fill of container; label statement of substandard fill.
- 27.43 Artificially sweetened canned fruit cocktail; identity; label statement of optional ingredients.
- 27.50 Canned pineapple; identity; label statement of optional ingredients.
- 27.51 Canned pineapple; quality; label statement of substandard quality.
- 27.52 Canned crushed pineapple; fill of container; label statement of substandard fill.
- 27.54 Canned pineapple juice; identity; label statement of optional ingredients.
- 27.55 Canned pineapple juice; quality; label statement of substandard quality.
- 27.56 Canned pineapple juice; fill of container; label statement of substandard fill.
- 27.60 Canned prune juice; identity; label statement of optional ingredients.
- 27.70 Canned figs; identity; label statement of optional ingredients.
- 27.73 Artificially sweetened canned figs; identity; label statement of optional ingredients.
- 27.101 Frozen concentrate for lemonade; identity; label statement of optional ingredients.
- 27.102 Frozen concentrate for colored lemonade; identity; label statement of optional ingredients.

AUTHORITY: §§ 27.1 to 27.102 issued under sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interpret or apply sec. 401, 52 Stat. 1046, as amended; 21 U.S.C. 341.

§ 27.1 Definitions.

For the purposes of this part:

(a) The term "corn sirup" means a clarified, concentrated aqueous solution of the products obtained by the incomplete hydrolysis of cornstarch, and in-

cludes dried corn sirup. The solids of corn sirup and of dried corn sirup contain not less than 40 percent by weight of reducing sugars calculated as anhydrous dextrose.

(b) The term "dextrose" means the hydrated or anhydrous, refined monosaccharide obtained from hydrolyzed starch.

(c) The term "dried glucose sirup" means the product obtained by drying "glucose sirup."

(d) The term "glucose sirup" means a clarified, concentrated, aqueous solution of the products obtained by the incomplete hydrolysis of any edible starch. The solids of glucose sirup contain not less than 40 percent by weight of reducing sugars calculated as anhydrous dextrose.

(e) The term "invert sugar sirup" means an aqueous solution of inverted or partly inverted, refined or partly refined sucrose, the solids of which contain not more than 0.3 percent by weight of ash, and which is colorless, odorless, and flavorless, except for sweetness.

(f) The term "sugar" means refined sucrose.

§ 27.2 Canned peaches; identity; label statement of optional ingredients.

(a) Canned peaches is the food prepared from one of the optional peach ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section. Such food may be seasoned with one or more of the following optional ingredients:

- (1) Spice.
- (2) Flavoring, other than artificial flavoring.
- (3) A vinegar.

(4) Peach pits, except in the cases of peeled whole peaches and unpeeled whole peaches, in a quantity not more than 1 peach pit to each 8 ounces of finished canned peaches.

(5) Peach kernels, except in the cases of peeled whole peaches and unpeeled whole peaches, and except when optional ingredient (4) is used.

Such food is sealed in a container and is so processed by heat as to prevent spoilage.

(b) The optional peach ingredients referred to in paragraph (a) of this section are prepared from mature peaches of the yellow clingstone, yellow freestone, white clingstone, or white freestone varietal group, and are in the following forms of units: Peeled whole, unpeeled whole, peeled halves, unpeeled halves, peeled quarters, peeled slices, peeled dice, peeled mixed pieces of irregular sizes and shapes. Each such form of units prepared from each such varietal group is an optional peach ingredient. Each such ingredient, except in the case of peeled whole peaches and unpeeled whole peaches, is pitted. For the purpose of paragraph (d) of this section, the names of such optional peach ingredients are the words "Yellow Cling" or "Yellow Clingstone," "White Cling" or "White Clingstone," "Yellow Free" or "Yellow Freestone" or "White Free" or "White Freestone," as the case may be, preceded or followed by the word or

words "Whole," "Unpeeled Whole," "Halves" or "Halved," "Unpeeled Halves," or "Unpeeled Halved," "Quarters" or "Quartered," "Slices" or "Sliced," "Dice" or "Diced," or "Mixed Pieces of Irregular Sizes and Shapes," as the case may be.

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

- (i) Water.
- (ii) Peach juice.
- (iii) Slightly sweetened water.
- (iv) Light sirup.
- (v) Heavy sirup.
- (vi) Extra heavy sirup.
- (vii) Slightly sweetened peach juice.
- (viii) Light peach juice sirup.
- (ix) Heavy peach juice sirup.
- (x) Extra heavy peach juice sirup.

As used in this subparagraph the term "water" means, in addition to water, any mixture of water and peach juice; and the term "peach juice" means the fresh or canned expressed juice of mature peaches, of any varietal group specified in paragraph (b) of this section, to which no water is added, directly or indirectly.

(2) Each of packing media (1) (iii) to (x), inclusive, is prepared with a liquid ingredient and a saccharine ingredient. Water is the liquid ingredient from which packing media (1) (iii) to (vi), inclusive, are prepared, and peach juice is the liquid ingredient from which packing media (1) (vii) to (x), inclusive, are prepared. The saccharine ingredient from which packing media (1) (iii) to (x), inclusive, are prepared is one of the following: Sugar; invert sugar sirup; any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used are not more than the weight of the solids of the sugar or invert sugar sirup used; except that packing media (1) (vii) to (x), inclusive, are not prepared with any invert sugar sirup or with any corn sirup other than dried corn sirup or with any glucose sirup other than dried glucose sirup. A packing medium prepared with peach juice and any invert sugar sirup or corn sirup other than dried corn sirup or glucose sirup other than dried glucose sirup is considered to be prepared with water as the liquid ingredient.

(3) The respective densities of packing media (1) (iii) to (x), inclusive, as measured on the Brix hydrometer 15 days or more after the peaches are canned, are within the range prescribed for each in the following list:

Number of packing medium:	Brix measurement
(1) (iii) and (vii)---	Less than 14°.
(1) (iv) and (viii)---	14° or more but less than 19°.
(1) (v) and (ix)---	19° or more but less than 24°.
(1) (vi) and (x)---	24° or more but not more than 35°.

(d) The label shall bear the name of the optional peach ingredient used, as specified in paragraph (b) of this section, and the name whereby the optional packing medium used is designated in paragraph (c) of this section, preceded by "In" or "Packed in." When any of the optional ingredients permitted by one of the following specified subparagraphs of paragraph (a) of this section are used, the label shall bear the words set forth below after the number of such subparagraph:

(1) "Spiced" or "Spice Added" or "With Added Spice," or in lieu of the word "Spice," the common name of the spice.

(2) "Flavoring Added" or "With Added Flavoring," or, in lieu of the word "Flavoring," the common name of the flavoring.

(3) "Seasoned with Vinegar" or "Seasoned with ----- Vinegar," the blank being filled in with the word showing the kind of vinegar used.

(4) "Seasoned with Peach Pits."

(5) "Seasoned with Peach Kernels."

When two or more of the optional ingredients specified in paragraph (a) (1) (2), (3), and (4) or (5) of this section are used, such words may be combined, as for example, "Seasoned with Cider Vinegar, Cloves, Cinnamon Oil, and Peach Kernels."

(e) Wherever the name "peaches" appears on the label so conspicuously as to be easily seen under the customary conditions of purchase, the words specified in this section, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that the specific varietal name of the peaches may so intervene.

§ 27.3 Canned peaches; quality; label statement of substandard quality.

(a) The standard of quality for canned peaches is as follows:

(1) All units tested in accordance with the method prescribed in paragraph (b) of this section are pierced by a weight of not more than 300 grams.

(2) In the cases of halves and quarters, the weight of each unit is not less than $\frac{3}{8}$ ounce and $\frac{3}{10}$ ounce, respectively.

(3) In the cases of whole peaches, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein.

(4) Except in the case of unpeeled peaches, there is present in the finished canned peaches not more than 1 square inch of peel per each 1 pound of net contents.

(5) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormalities.

(6) In the cases of whole peaches, halves, quarters, and slices, all units are untrimmed, or are so trimmed as to preserve normal shape.

(7) Except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than one unit in a container of less than 20 units, are crushed or broken. (A unit which has lost its normal shape because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken.)

(b) Canned peaches shall be tested by the following method to determine whether or not they meet the requirements of paragraph (a) (1) of this section: So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of $1\frac{1}{2}$ inches inside diameter, with vertical sides; or rectangular in shape, $\frac{3}{4}$ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of $\frac{3}{4}$ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least $\frac{1}{2}$ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{16}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned peaches falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality-----," the blank to be filled in with the words specified after the corresponding number of each clause of paragraph (a) of this section which such canned peaches fail to meet, as follows: (1) "Not

Tender"; (2) "Small Halves," or "Small Quarters," as the case may be; (3) "Mixed Sizes"; (4) "Not Well Peeled"; (5) "Blemished"; (6) "Unevenly Trimmed"; (7) "Partly Crushed or Broken." Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "peaches" and any words and statements required or authorized to appear with such name by § 27.2(b).

§ 27.4 Canned peaches; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned peaches is the maximum quantity of the optional peach ingredient that can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned peaches fall below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3 (b) of this chapter, in the manner and form therein specified.

§ 27.5 Canned peaches with rum; identity; label statement of optional ingredients.

Canned peaches with rum conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for canned peaches by § 27.2, except that it contains added rum in such amount that its alcohol content is more than 3 percent but less than 5 percent by weight.

§ 27.6 Artificially sweetened canned peaches; identity; label statement of optional ingredients.

(a) Artificially sweetened canned peaches is the food which conforms to the definition and standard of identity prescribed for canned peaches by § 27.2, except that in lieu of a packing medium specified in § 27.2(c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened _____," the blank being filled in with the name prescribed by § 27.2 for canned peaches having the same optional peach ingredient.

(2) The artificially sweetened food is subject to the requirements for label statement of optional ingredients used, as prescribed for canned peaches by § 27.2. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.10 Canned apricots; identity; label statement of optional ingredients.

(a) Canned apricots is the food prepared from one of the optional apricot ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section. Such food may be seasoned

with one or more of the following optional ingredients:

- (1) Spice.
- (2) Flavoring, other than artificial flavoring.
- (3) A vinegar.
- (4) Apricot pits, except in the cases of unpeeled whole apricots and peeled whole apricots, in a quantity not more than 1 apricot pit to each 8 ounces of finished canned apricots.

(5) Apricot kernels, except in the cases of unpeeled whole apricots and peeled whole apricots, and except when optional ingredient (4) is used.

Such food is sealed in a container and so processed by heat as to prevent spoilage.

(b) The optional apricot ingredients referred to in paragraph (a) of this section are prepared from mature apricots and are in the following forms of units: Unpeeled whole, peeled whole, unpeeled halves, peeled halves, unpeeled quarters, peeled quarters, unpeeled slices, peeled slices, unpeeled mixed pieces of irregular sizes and shapes, peeled mixed pieces of irregular sizes and shapes. Each such form of units is an optional apricot ingredient. Each such ingredient, except in the cases of unpeeled whole apricots and peeled whole apricots, is pitted. For the purposes of paragraph (d) of this section, the names of such optional apricot ingredients are "Whole," "Halves," or "Halved," "Quarters" or "Quartered," "Slices" or "Sliced," "Mixed Pieces of Irregular Sizes and Shapes," as the case may be, preceded or followed by "Unpeeled" or "Peeled," as the case may be.

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

- (i) Water.
- (ii) Apricot juice.
- (iii) Slightly sweetened water.
- (iv) Light sirup.
- (v) Heavy sirup.
- (vi) Extra heavy sirup.
- (vii) Slightly sweetened apricot juice.
- (viii) Light apricot juice sirup.
- (ix) Heavy apricot juice sirup.
- (x) Extra heavy apricot juice sirup.

As used in this subparagraph the term "water" means, in addition to water, any mixture of water and apricot juice; and the term "apricot juice" means the fresh or canned expressed juice of mature apricots to which no water is added, directly or indirectly.

(2) Each of packing media (1) (iii) to (x), inclusive, is prepared with a liquid ingredient and a saccharine ingredient. Water is the liquid ingredient from which packing media (1) (iii) to (vi), inclusive, are prepared, and apricot juice is the liquid ingredient from which packing media (1) (vii) to (x), inclusive, are prepared. The saccharine ingredient from which packing media (1) (iii) to (x), inclusive, are prepared is one of the following: Sugar; invert sugar sirup; any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn

sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used is not more than the weight of the solids of the sugar or invert sugar sirup used; except that packing media (1) (vii) to (x), inclusive, are not prepared with any invert sugar sirup or with any corn sirup other than dried corn sirup or with any glucose sirup other than dried glucose sirup. A packing medium prepared with apricot juice and any invert sugar sirup or corn sirup other than dried corn sirup or glucose sirup other than dried glucose sirup is considered to be prepared with water as the liquid ingredient.

(3) The respective densities of packing media (1) (iii) to (x), inclusive, as measured on the Brix hydrometer 15 days or more after the apricots are canned, are within the range prescribed for each in the following list:

Number of packing medium:	Brix measurement
(1) (iii) and (vii)---	Less than 16°.
(1) (iv) and (viii)---	16° or more but less than 21°.
(1) (v) and (ix)---	21° or more but less than 25°.
(1) (vi) and (x)---	25° or more but not more than 40°.

(d) The label shall bear the name of the optional apricot ingredient used, as specified in paragraph (b) of this section, and the name whereby the optional packing medium used is designated in paragraph (c) of this section, preceded by "In" or "Packed in." When any optional ingredient permitted by one of the following specified subparagraphs of paragraph (a) is used, the labels shall bear the words set forth below after the number of such subparagraph:

(1) "Spiced" or "Spice Added" or "With Added Spice," or, in lieu of the word "Spice," the common name of the spice.

(2) "Flavoring Added" or "With Added Flavoring," or, in lieu of the word "Flavoring," the common name of the flavoring.

(3) "Seasoned with Vinegar" or "Seasoned with _____ Vinegar," the blank being filled in with the word showing the kind of vinegar used.

(4) "Seasoned with Apricot Pits."

(5) "Seasoned with Apricot Kernels." When two or more of the optional ingredients specified in paragraph (a) (1), (2), (3), and (4) or (5) of this section are used, such words may be combined, as for example, "Seasoned with Cider Vinegar, Cloves, Cinnamon Oil, and Apricot Kernels."

(e) Wherever the name "apricots" appears on the label so conspicuously as to be easily seen under the customary conditions of purchase, the words specified in this section, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that

the specific varietal name of the apricots may so intervene.

§ 27.11 Canned apricots; quality; label statement of substandard quality.

(a) The standard of quality for canned apricots is as follows:

(1) All units tested in accordance with the method prescribed in paragraph (b) of this section are pierced by a weight of not more than 300 grams.

(2) In the cases of halves and quarters, the weight of each unit is not less than $\frac{3}{4}$ ounce and $\frac{1}{2}$ ounce, respectively.

(3) In the cases of whole apricots, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein.

(4) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormalities.

(5) In the cases of whole apricots, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal shape.

(6) Except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than 1 unit in a container of less than 20 units, are crushed or broken. (A unit which has lost its normal shape because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken.)

(b) Canned apricots shall be tested by the following method to determine whether or not they meet the requirements of paragraph (a) (1) of this section: So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of $1\frac{1}{8}$ inches inside diameter, with vertical sides; or rectangular in shape, $\frac{3}{4}$ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of $\frac{3}{4}$ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least $\frac{1}{2}$ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{3}{16}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those

units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned apricots falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality-----," the blank to be filled in with the words specified after the corresponding number of each subparagraph of paragraph (a) of this section which such canned apricots fail to meet, as follows: (1) "Not Tender"; (2) "Small Halves," or "Small Quarters," as the case may be; (3) "Mixed Sizes"; (4) "Blemished"; (5) "Unevenly Trimmed"; (6) "Partly Crushed or Broken." Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "apricots" and any words and statements required or authorized to appear with such name by § 27.10 (b).

§ 27.12 Canned apricots; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned apricots is the maximum quantity of the optional apricot ingredient that can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned apricots fall below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3(b) of this chapter, in the manner and form therein specified.

§ 27.13 Canned apricots with rum; identity; label statement of optional ingredients.

Canned apricots with rum conforms to the definition and standard of identity and is subject to the requirements for label statement of optional ingredients, prescribed for canned apricots by § 27.10, except that it contains added rum in such amount that its alcohol content is more than 3 percent but less than 5 percent by weight.

§ 27.14 Artificially sweetened canned apricots; identity; label statement of optional ingredients.

(a) Artificially sweetened canned apricots is the food which conforms to the definition and standard of identity prescribed for canned apricots by § 27.10, except that in lieu of a packing medium specified in § 27.10(c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened -----," the blank being filled in with the name prescribed by § 27.10 for canned apricots having the same optional apricot ingredient.

(2) The artificially sweetened food is subject to the requirements for label statement of optional ingredients used, as prescribed for canned apricots by § 27.10. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.20 Canned pears; identity; label statement of optional ingredients.

(a) Canned pears is the food prepared from one of the optional pear ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section. Such food may also contain one or more of the following optional ingredients:

- (1) Spice.
- (2) Flavoring, other than artificial flavoring.
- (3) A vinegar.
- (4) (i) Mint flavoring and harmless artificial green coloring; or
- (ii) Spice or spice flavoring and harmless artificial red coloring.

Such food is sealed in a container and so processed by heat as to prevent spoilage.

(b) The optional pear ingredients referred to in paragraph (a) of this section are prepared from mature pears and are in the following forms of units: Peeled whole, unpeeled whole, peeled halves, unpeeled halves, peeled quarters, peeled slices, peeled dice, peeled mixed pieces of irregular sizes and shapes. Each such form of units is an optional pear ingredient. Each such ingredient, except in the cases of peeled whole pears and unpeeled whole pears, is cored. For the purposes of paragraph (d) of this section, the respective names of such optional pear ingredients are "Whole," "Halves" or "Halved," "Quarters" or "Quartered," "Slices" or "Sliced," "Dice" or "Diced," "Mixed Pieces of Irregular Sizes and Shapes," preceded or followed in case the units are whole or halves and are unpeeled, by the word "Unpeeled."

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

- (i) Water.
- (ii) Pear juice.
- (iii) Slightly sweetened water.
- (iv) Light sirup.
- (v) Heavy sirup.
- (vi) Extra heavy sirup.
- (vii) Slightly sweetened pear juice.
- (viii) Light pear juice sirup.
- (ix) Heavy pear juice sirup.
- (x) Extra heavy pear juice sirup.

As used in this subparagraph the term "water" means, in addition to water, any mixture of water and pear juice; and the term "pear juice" means the fresh or canned expressed juice of mature pears to which no water is added, directly or indirectly.

(2) Each of packing media (1) (iii) to (x), inclusive, is prepared with a liquid ingredient and a saccharine ingredient. Water is the liquid ingredient from

which packing media (1) (iii) to (vi), inclusive, are prepared, and pear juice is the liquid ingredient from which packing media (1) (vii) to (x), inclusive, are prepared. The saccharine ingredient from which packing media (1) (iii) to (x), inclusive, are prepared is one of the following: Sugar; invert sugar sirup; any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used is not more than the weight of the solids of the sugar or invert sugar sirup used; except that packing media (1) (vii) to (x), inclusive, are not prepared with any invert sugar sirup or with any corn sirup other than dried corn sirup or with any glucose sirup other than dried glucose sirup. A packing medium prepared with pear juice and any invert sugar sirup or corn sirup other than dried corn sirup or glucose sirup other than dried glucose sirup is considered to be prepared with water as the liquid ingredient.

(3) The respective densities of packing media (1) (iii) to (x), inclusive, as measured on the Brix hydrometer 15 days or more after the pears are canned, are within the range prescribed for each in the following list:

Number of packing medium:	Brix measurement
(1) (iii) and (vii) --	Less than 14°.
(1) (iv) and (viii) --	14° or more but less than 18°.
(1) (v) and (ix) ---	18° or more but less than 22°.
(1) (vi) and (x) ---	22° or more but not more than 35°.

(d) The label shall bear the name of the optional pear ingredient used, as specified in paragraph (b) of this section, and the name whereby the optional packing medium used is designated in paragraph (c) of this section, preceded by "In" or "Packed in." When any optional ingredient permitted by one of the following specified subparagraphs of paragraph (a) of this section is used, the label shall bear the words set forth below after the number of such subparagraph:

(1) "Spiced" or "Spice Added" or "With Added Spice," or, in lieu of the word "Spice," the common name of the spice.

(2) "Flavoring Added" or "With Added Flavoring," or, in lieu of the word "Flavoring," the common name of the flavoring.

(3) "Seasoned with Vinegar" or "Seasoned with ----- Vinegar," the blank being filled in with the word showing the kind of vinegar used.

(4) "With added flavoring and artificial coloring" or "flavoring and arti-

cial coloring added." The word "flavoring" may be replaced by "mint flavoring," "spice flavoring," or "spice," as is appropriate, or by the common or usual name of the flavoring or spice used. The artificial coloring may be named as "artificial green coloring" or "artificial red coloring," as the case may be.

When two or more of the optional ingredients specified in paragraph (a) (1), (2), (3), and (4) of this section are used, such words may be combined, as for example, "With added cloves and cinnamon oil, artificial red coloring, and seasoned with cider vinegar."

(e) Wherever the name "pears" appears on the label so conspicuously as to be easily seen under the customary conditions of purchase, the words specified in this section, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that the specific varietal name of the pears may so intervene.

§ 27.21 Canned pears; quality; label statement of substandard quality.

(a) The standard of quality for canned pears is as follows:

(1) All units tested in accordance with the method prescribed in paragraph (b) of this section are pierced by a weight of not more than 300 grams.

(2) In the cases of halves and quarters, the weight of each unit is not less than $\frac{3}{8}$ ounce and $\frac{3}{10}$ ounce, respectively.

(3) In the cases of whole pears, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein.

(4) Except in the case of unpeeled pears, there is present in the finished canned pears not more than 1 square inch of peel per each 1 pound of net contents.

(5) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormalities.

(6) In the cases of whole pears, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal shape.

(7) Except in the case of mixed pieces of irregular sizes and shapes, not more than 10 percent of the units in a container of 10 or more units, and not more than 1 unit in a container of less than 10 units, are crushed or broken. (A unit which has lost its normal shape because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken.)

(b) Canned pears shall be tested by the following method to determine whether or not they meet the requirements of paragraph (a)(1) of this section: So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled remove the peel. The top of the receptacle is circular in shape of $1\frac{1}{8}$ inches inside diameter, with vertical sides; or rectangular in shape, $\frac{3}{4}$ inch by 1 inch inside

measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of $\frac{3}{4}$ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least $\frac{1}{2}$ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{32}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned pears falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3(a) of this chapter in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality ----," the blank to be filled in with the words specified after the corresponding number of each subparagraph of paragraph (a) of this section which such canned pears fail to meet, as follows: (1) "Not Tender"; (2) "Small Halves" or "Small Quarters," as the case may be; (3) "Mixed Sizes"; (4) "Not Well Peeled"; (5) "Blemished"; (6) "Unevenly Trimmed"; (7) "Partly Crushed or Broken." Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "pears" and any words and statements required or authorized to appear with such names by § 27.20(b).

§ 27.22 Canned pears; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned pears is the maximum quantity of the optional pear ingredient that can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned pears fall below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3 (b) of this chapter, in the manner and form therein specified.

§ 27.23 Canned pears with rum; identity; label statement of optional ingredients.

Canned pears with rum conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for canned pears by § 27.20, except that it contains added rum in such amount that its alcohol content is more than 3 percent but less than 5 percent by weight.

§ 27.24 Artificially sweetened canned pears; identity; label statement of optional ingredients.

(a) Artificially sweetened canned pears is the food which conforms to the definition and standard of identity prescribed for canned pears by § 27.20, except that in lieu of a packing medium specified in § 27.20(c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened _____," the blank being filled in with the name prescribed by § 27.20 for canned pears having the same optional pear ingredient.

(2) The artificially sweetened food is subject to the requirements for label statement of optional ingredients used, as prescribed for canned pears by § 27.20. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.30 Canned cherries; identity; label statement of optional ingredients.

(a) Canned cherries is the food prepared from one of the optional cherry ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section. Such food may be seasoned with one or more of the following optional ingredients:

- (1) Spice.
- (2) Flavoring, other than artificial flavoring.
- (3) A vinegar.

Such food is sealed in a container and so processed by heat as to prevent spoilage.

(b) The optional cherry ingredients referred to in paragraph (a) of this section are prepared from mature cherries of the red sour, light sweet, or dark sweet varietal group. Pitted cherries of each such group and unpitted cherries of each such group are an optional cherry ingredient. For the purposes of paragraph (d) of this section, the names of such optional cherry ingredients are the words "Red Sour" or "Red Tart," "Light Sweet" or "Dark Sweet," as the case may be, preceded or followed by the word "Pitted" in case such ingredients are pitted.

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

- (i) Water.
- (ii) Cherry juice.
- (iii) Slightly sweetened water.
- (iv) Light sirup.
- (v) Heavy sirup.
- (vi) Extra heavy sirup.
- (vii) Slightly sweetened cherry juice.

(viii) Light cherry juice sirup.

(ix) Heavy cherry juice sirup.

(x) Extra heavy cherry juice sirup.

As used in this subparagraph the term "water" means, in addition to water, any mixture of water and cherry juice; and the term "cherry juice" means the fresh or canned expressed juice of mature cherries, of any varietal group specified in paragraph (b) of this section, to which no water is added directly, or indirectly.

(2) Each of packing media (1) (iii) to (x), inclusive, is prepared with a liquid ingredient and a saccharine ingredient. Water is the liquid ingredient from which packing media (1) (iii) to (vi), inclusive, are prepared, and cherry juice is the liquid ingredient from which packing media (1) (vii) to (x), inclusive, are prepared. The saccharine ingredient from which packing media (1) (iii) to (x), inclusive, are prepared is one of the following: Sugar (invert sugar sirup); any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used is not more than the weight of the solids of the sugar or invert sugar sirup used; except that packing media (1) (vii) to (x), inclusive, are not prepared with any invert sugar sirup or with any corn sirup other than dried corn sirup or with any glucose sirup other than dried glucose sirup. A packing medium prepared with cherry juice and any invert sugar sirup or corn sirup other than dried corn sirup or glucose sirup other than dried glucose sirup is considered to be prepared with water as the liquid ingredient.

(3) The respective densities of packing media (1) (iii) to (x), inclusive, as measured on the Brix hydrometer 15 days or more after the cherries are canned, are within the range prescribed for each in the following list:

Number of packing medium:	
In case of sweet cherries:	
	Brix measurement
(1) (iii) and (vii) -	Less than 16°.
(1) (iv) and (viii) -	16° or more but less than 20°.
(1) (v) and (ix) -	20° or more but less than 25°.
(1) (vi) and (x) -	25° or more but not more than 35°.
In case of red sour cherries:	
(1) (iii) and (vii) -	Less than 18°.
(1) (iv) and (viii) -	18° or more but less than 22°.
(1) (v) and (ix) -	22° or more but less than 28°.
(1) (vi) and (x) -	28° or more but not more than 45°.

(d) The label shall bear the name of the optional cherry ingredient used, as

specified in paragraph (b) of this section, and the name whereby the optional packing medium used is designated in paragraph (c) of this section, preceded by "In" or "Packed in." When any optional ingredient permitted by one of the following specified subparagraphs of paragraph (a) of this section is used, the label shall bear the words set forth below after the number of such subparagraph:

(1) "Spiced" or "Spice Added" or "With Added Spice," or, in lieu of the word "Spice," the common name of the spice.

(2) "Flavoring Added" or "With Added Flavoring," or, in lieu of the word "Flavoring," the common name of the flavoring.

(3) "Seasoned with Vinegar" or "Seasoned with _____ Vinegar," the blank being filled in with the word showing the kind of vinegar used.

When two or all of the optional ingredients specified in paragraph (a) (1), (2), and (3) of this section are used, such words may be combined, as for example, "Seasoned with Cider Vinegar, Cloves, and Cinnamon Oil."

(e) Wherever the name "cherries" appears on the label so conspicuously as to be easily seen under the customary conditions of purchase, the words specified in this section showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter except that the specific varietal name of the cherries may so intervene.

§ 27.31 Canned cherries; quality; label statement of substandard quality.

(a) The standard of quality for canned cherries is as follows:

(1) In the case of pitted cherries, not more than 1 pit is present in each 20 ounces of canned cherries, as determined by the method prescribed in paragraph (b) (1) of this section.

(2) In the case of unpitted cherries, the weight of each cherry in the container is not less than $\frac{1}{10}$ ounce.

(3) In the case of unpitted cherries, the weight of the largest cherry in the container is not more than twice the weight of the smallest cherry therein.

(4) In the case of unpitted cherries, the total weight of pits is not more than 12 percent of the weight of drained cherries, as determined by the method prescribed in paragraph (b) (2) of this section.

(5) Not more than 15 percent by count of the cherries in the container are blemished with scab, hail injury, discoloration, scar tissue, or other abnormality. A unit showing skin discoloration having an aggregate area not exceeding that of a circle $\frac{3}{16}$ inch in diameter and not extending into the fruit tissue shall not be considered as blemished.

(b) (1) Pitted canned cherries shall be tested by the following method to determine whether or not they comply with the requirements of paragraph (a) (1) of this section: Take at random such number of containers as to have a total quantity of contents of at least 24 pounds. Open the containers and weigh the contents. Count the pits and pieces of pit

shell in such total quantity. Count a piece of pit shell equal to or smaller than one-half pit shell as one-half pit, and a piece of pit shell larger than one-half pit shell as one pit; but when two or more pieces of pit shell are within or attached to a single cherry, count such pieces as one-half pit if their combined size is equivalent to that of one-half pit shell or less, and as one pit if their combined size is equivalent to that of more than one-half pit shell. From the total number of pits so counted and the combined weight of the contents of all the containers, calculate the number of pits present in each 20 ounces of canned cherries.

(2) Unpitted canned cherries shall be tested by the following method to determine whether or not they comply with the requirements of paragraph (a)(4) of this section: Tilt the opened container so as to distribute the contents over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds, or 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is No. 8 woven-wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves," published October 25, 1938, by United States Department of Commerce, National Bureau of Standards. Without shifting the cherries, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weight the sieve and drained cherries. The weight so found, less the weight of the sieve, shall be considered to be the weight of drained cherries. Pit the cherries and wash the pits free from adhering flesh. Drain and weigh the pits by the method prescribed above. Divide the weight of pits so found by the weight of drained cherries, and multiply by 100.

(c) If the quality of canned cherries falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality -----," the blank to be filled in with the words specified after the corresponding number of each subparagraph of paragraph (a) of this section which such canned cherries fail to meet, as follows: (1) "Partially Pitted"; (2) "Small"; (3) "Mixed Sizes"; (4) "Thin Fleshed"; (5) "Blemished." Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Cherries" and any words and statements required or authorized to appear with such name by § 27.30(b).

§ 27.32 Canned cherries; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned cherries is the maximum quantity of the optional cherry ingredient that can be sealed in the container and processed by heat to prevent spoilage, without crushing su² ingredient.

(b) If canned cherries fall below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3(b) of this chapter, in the manner and form therein specified.

§ 27.33 Canned cherries with rum; identity; label statement of optional ingredients.

Canned cherries with rum conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for canned cherries by § 27.30, except that it contains added rum in such amount that its alcohol content is more than 3 percent but less than 5 percent by weight.

§ 27.34 Artificially sweetened canned cherries; identity; label statement of optional ingredients.

(a) Artificially sweetened canned cherries is the food which conforms to the definition and standard of identity prescribed for canned cherries by § 27.30, except that in lieu of a packing medium specified in § 27.30(c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened -----," the blank being filled in with the name prescribed by § 27.30 for canned cherries having the same optional cherry ingredient.

(2) The artificially sweetened food is subject to the requirements for label statement of optional ingredients used, as prescribed for canned cherries by § 27.30. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.40 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; identity; label statement of optional ingredients.

(a) Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail, is the food prepared from the mixture of fruit ingredients prescribed in paragraph (b) of this section, in the forms and proportions therein prescribed, and one of the optional packing media specified in paragraph (c) of this section. It is sealed in a container and is so processed by heat as to prevent spoilage.

(b) The fruit ingredients referred to in paragraph (a) of this section, the forms of each, and the percent by weight of each in the mixture of drained fruit from the finished canned fruit cocktail are as follows:

(1) Peaches of any yellow variety, which are pitted, peeled, and diced, not less than 30 percent and not more than 50 percent.

(2) Pears of any variety, which are peeled, cored, and diced, not less than 25 percent and not more than 45 percent.

(3) Whole grapes of any seedless variety, not less than 6 percent and not more than 20 percent.

(4) Pineapples of any variety, which are peeled, cored, and cut into sectors or into dice, not less than 6 percent and not more than 16 percent. And

(5) One of the following optional cherry ingredients, each of which is stemmed, pitted, and cut into approximate halves, not less than 2 percent and not more than 6 percent.

(i) Cherries of any light, sweet variety;

(ii) Cherries artificially colored red; or

(iii) Cherries artificially colored red and artificially flavored.

Each such fruit ingredient is prepared from mature fruit which is fresh or canned. Notwithstanding the preceding provisions of this paragraph, each 4½ ounces avoirdupois of the finished canned fruit cocktail and each fraction thereof greater than 2 ounces avoirdupois contain not less than 2 sectors or 3 dice of pineapple and not less than 1 approximate half of the optional cherry ingredient.

(c) (1) The optional packing media referred to in paragraph (a) of this section are as follows:

(i) Water.

(ii) Fruit juice.

(iii) Light sirup.

(iv) Heavy sirup.

(v) Extra heavy sirup.

(vi) Light fruit juice sirup.

(vii) Heavy fruit juice sirup.

(viii) Extra heavy fruit juice sirup.

(2) Each of packing media (1) (iii), (iv), and (v) is prepared with water as its liquid ingredient, and each of packing media (1) (vi), (vii), and (viii) is prepared with fruit juice as its liquid ingredient. Except as provided in paragraph (d)(3) of this section, each of packing media (1) (iii) to (viii), inclusive, is prepared with any one of the following saccharine ingredients: Sugar; invert sugar sirup; any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which the weight of the solids of the dextrose used multiplied by two, added to the weight of the solids of the corn sirup or the glucose sirup used multiplied by three, is not more than the weight of the solids of the sugar or invert sugar sirup used. The respective densities of packing media (1) (iii) to (viii), inclusive, as measured on the Brix hydrometer 15 days or more after the fruit cocktail is canned are within the range prescribed for each in the following list:

Number of packing medium:	Brix measurement
(1) (iii) and (vi)---	14° or more but less than 18°.
(1) (iv) and (vii)---	18° or more but less than 22°.
(1) (v) and (viii)---	22° or more but not more than 35°.

(d) For the purposes of this section:

(1) The term "water" means, in addition to water, both the liquid drained from any fruit ingredient previously canned in water as its sole packing medium and any mixture of water and fruit juice, including the liquid drained from any fruit ingredient previously canned in such mixture.

(2) The term "fruit juice" means the fresh or canned, expressed juice or juices of one or more of the mature fruits named in paragraph (b) of this section including the liquid drained from any fruit ingredient previously canned in such juice or juices as its sole packing medium, to which no water has been added, directly or indirectly. Fruit juice may be strained or filtered.

(3) When the optional packing medium is prepared with fruit juice and invert sugar sirup or corn sirup other than dried corn sirup or glucose sirup other than dried glucose sirup, it shall be considered to be light sirup, heavy sirup, or an extra heavy sirup, as the case may be, and not a light fruit juice sirup, heavy fruit juice sirup, or an extra heavy fruit juice sirup.

(4) The term "light sirup," "heavy sirup," or "extra heavy sirup" includes a sirup which conforms in all other respects to the provisions of this section, in the preparation of which there is used the liquid drained from any fruit ingredient previously canned in a packing medium consisting wholly of the liquid and saccharine ingredients of a light sirup, heavy sirup, or extra heavy sirup.

(5) Except as provided in subparagraph (3) of this paragraph, the term "light fruit juice sirup," "heavy fruit juice sirup," or "extra heavy fruit juice sirup" includes a sirup which conforms in all other respects to the provisions of this section, in the preparation of which there is used the liquid drained from any fruit ingredients previously canned in a packing medium consisting wholly of the liquid and saccharine ingredients of light fruit juice sirup, heavy fruit juice sirup, or extra heavy fruit juice sirup.

(e) (1) The optional ingredients specified in paragraphs (b) (5) (ii) and (iii) and (c) (1) (i) to (viii) of this section, inclusive, are hereby designated as optional ingredients which, when used, shall be named on the label by the name whereby each is so specified.

(2) Such names shall immediately and conspicuously, without intervening written, printed, or graphic matter, precede or follow the name "fruit cocktail," "cocktail fruits," or "fruits for cocktail" wherever it appears on the label so conspicuously as to be easily seen under customary conditions of purchase.

§ 27.41 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; quality; label statement of substandard quality.

(a) The standard of quality for canned fruit cocktail is as follows:

(1) Not more than 20 percent by weight of the units in the container of peach or pear, or of pineapple if the units thereof are diced, are more than $\frac{3}{4}$ inch in greatest edge dimension, or pass through the meshes of a sieve designated as $\frac{7}{16}$ inch in Table I of "Standard Spec-

ifications for Sieves," published March 1, 1940, in L.C. 584 of the National Bureau of Standards, United States Department of Commerce. If the units of pineapple are in the form of sectors, not more than 20 percent of such sectors in the container fail to conform to the following dimensions: The length of the outside arc is not more than $\frac{3}{4}$ inch but is more than $\frac{3}{8}$ inch; the thickness is not more than $\frac{1}{2}$ inch but is more than $\frac{5}{16}$ inch; the length (measured along the radius from the inside arc to the outside arc) is not more than $1\frac{1}{4}$ inches but is more than $\frac{3}{4}$ inch.

(2) Not more than 10 percent of the grapes in a container containing 10 grapes or more, and not more than 1 grape in a container containing less than 10 grapes, are cracked to the extent of being severed into two parts or are crushed to the extent that their normal shape is destroyed.

(3) Not more than 10 percent of the grapes in a container containing 10 grapes or more, and not more than 1 grape in a container containing less than 10 grapes, have the cap stem attached.

(4) There is present in the finished canned fruit cocktail not more than 1 square inch of pear peel per each 1 pound of drained weight of units of pear plus the weight of a proportion of the packing medium which is the same proportion as the drained weight of the units of pear bears to the drained weight of the entire contents of the can. Such drained weights shall be determined by the method prescribed in § 27.42.

(5) There is present in the finished canned fruit cocktail not more than 1 square inch of peach peel per each 1 pound of drained weight of units of peach plus the weight of a proportion of the packing medium which is the same proportion as the drained weight of units of peach bears to the drained weight of the entire contents of the can. Such drained weights shall be determined by the method prescribed in § 27.42.

(6) Not more than 15 percent of the units of cherry ingredient, and not more than 20 percent of the units of peach, pear, or grape, in the container are blemished with scab, hail injury, scar tissue, or other abnormality.

(7) If the cherry ingredient is artificially colored, the color of not more than 15 percent of the units thereof in a container containing more than six units, and of not more than one unit in a container containing six units or less, is other than evenly distributed in the unit or other than uniform with the color of the other units of the cherry ingredient.

(b) If the quality of canned fruit cocktail falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3 (a) of this chapter, in the manner and form therein specified.

§ 27.42 Canned fruit cocktail, canned cocktail fruits, canned fruits for cocktail; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned fruit cocktail is a fill such

that the total weight of drained fruit is not less than 65 percent of the water capacity of the container, as determined by the general method for water capacity of containers prescribed in § 10.2(a) of this chapter. Such total weight of drained fruit is determined by the following method: Tilt the opened container so as to distribute the contents evenly over the meshes of a circular sieve which has been previously weighed. The diameter of the sieve is 8 inches if the quantity of contents of the container is less than 3 pounds, and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth which complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table I of "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the United States Department of Commerce, National Bureau of Standards. Without shifting the material on the sieve so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and drained fruit. The weight so found, less the weight of the sieve, shall be considered to be the total weight of drained fruit.

(b) If canned fruit cocktail falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3(b) of this chapter, in the manner and form therein prescribed.

§ 27.43 Artificially sweetened canned fruit cocktail; identity; label statement of optional ingredients.

(a) Artificially sweetened canned fruit cocktail is the food which conforms to the definition and standard of identity prescribed for canned fruit cocktail by § 27.40, except that in lieu of a packing medium specified in § 27.40(c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened fruit cocktail."

(2) Artificially sweetened fruit cocktail is subject to the requirements for label statement of optional ingredients used, as prescribed for canned fruit cocktail by § 27.40. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.50 Canned pineapple; identity; label statement of optional ingredients.

(a) Canned pineapple is the food prepared from one of the following optional forms of units obtained from peeled, cored, mature fruits of the pineapple plant:

(1) Sliced, slices; consisting of whole circular slices cut across the axis of the peeled, cored fruit cylinders.

(2) Half sliced, half slices; consisting of semicircular halves of slices. A unit that is approximately one-half slice is considered to be a half slice.

(3) Broken sliced, broken slices; consisting of arc-shaped portions cut or

broken from slices, which portions are not uniform in size or shape.

(4) Tidbits; consisting of sectors cut from slices. Tidbits are reasonably uniform in size and shape; they are predominantly from $\frac{1}{16}$ -inch to $\frac{1}{2}$ -inch thick and, except for an occasional unit, each sector is not larger than one-sixth of the slice from which cut.

(5) Chunks; consisting of short, thick pieces cut from thick slices or from peeled, cored fruit. Chunks may or may not be symmetrical or uniform in shape and size. Predominantly, the units have a thickness greater than $\frac{1}{2}$ -inch, a width greater than $\frac{1}{16}$ -inch, but a longest dimension (along any edge) not greater than $1\frac{1}{2}$ inches.

(6) Cubes, diced; consisting of cube-shaped pieces cut from slices or from peeled, cored fruit. Except for an occasional unit, the longest dimension (along any edge) of each unit is not greater than $\frac{1}{16}$ -inch.

(7) Spears, fingers; consisting of long, slender pieces cut parallel to the core axis from peeled cored fruit cylinders. The units are not larger than one-sixth of the cylinder from which they are cut, and they are not less than $2\frac{1}{2}$ inches long.

(8) Crushed; consisting of shredded or finely cut pieces of fruit flesh.

The optional forms of units specified by subparagraphs (1) through (7) of this paragraph are canned with one of the optional packing media specified in paragraph (b) of this section. The optional form of unit specified by subparagraph (8) of this paragraph may be canned with one of the optional packing media specified in paragraph (b) (2) through (6) of this section or with one of the optional sweetening ingredients specified in paragraph (d) of this section. The food is sealed in containers, and is so processed by heat, either before or after sealing, as to prevent spoilage.

(b) The optional packing media referred to in paragraph (a) of this section are:

- (1) Water.
- (2) Pineapple juice.
- (3) Clarified juice.
- (4) Light sirup.
- (5) Heavy sirup.
- (6) Extra heavy sirup.

(c) For the purposes of this section:

(1) Pineapple juice conforms to the definition and standard of identity for unsweetened pineapple juice as specified in § 27.54, except that it is not required to be separately sealed in containers and so processed by heat as to prevent spoilage. Clarified juice is the liquid collected from cutting various forms of units from pineapple fruits, or the liquid expressed wholly or in part from pineapple cores, shells, or from pineapple flesh or parts thereof, which liquid is clarified and may be further refined or concentrated; but if the concentration is such that the packing medium conforms to the density range for one of the sirups hereinafter specified, such concentrated liquid is considered to be light sirup, heavy sirup, or extra heavy sirup, as the case may be.

(2) Except as the concentrated, clarified juice is considered to be a sirup packing medium as above provided, each of

the packing media light sirup, heavy sirup, and extra heavy sirup consists of an optional sweetening ingredient as specified in paragraph (d) of this section, dissolved in one or any mixture of two or more of the liquids designated in subparagraphs (1), (2), and (3) of paragraph (b) of this section. The sirup packing media have respective densities as determined by the method specified in "Official Methods of Analysis of the Association of Official Agricultural Chemists," Eighth Edition, on page 533, under the heading "Solids—By Means of Spindle—Official," using the Brix hydrometer 15 days or more after the pineapple is canned, which are within the ranges specified for each in the following list:

Packing medium.	Brix measurement
Light sirup-----	14° or more but less than 18°
Heavy sirup-----	18° or more but less than 22°
Extra heavy sirup---	22° or more but not more than 35°

(3) In the case of crushed pineapple (paragraph (a) (8) of this section), the juice resulting from cutting or shredding the pineapple flesh is considered to be pineapple juice, without regard to whether it has or has not been drained away from the pieces of pineapple.

(d) The optional sweetening ingredients referred to in paragraphs (a) and (c) of this section are:

- (1) Sugar.
- (2) Invert sugar sirup.

(3) Any mixture of optional sweetening ingredients designated in subparagraphs (1) and (2) of this paragraph.

(4) Any of the optional sweetening ingredients designated in subparagraphs (1), (2), and (3) of this paragraph with dextrose, provided that the weight of the solids of dextrose does not exceed one-third of the total weight of the solids of the combined sweetening ingredients.

(5) Any of the optional sweetening ingredients designated in subparagraphs (1), (2), and (3) of this paragraph with corn sirup or with dried corn sirup or with glucose sirup or with dried glucose sirup, or with any two or more of these, provided that the weight of the solids of corn sirup, dried corn sirup, glucose sirup, dried glucose sirup or the sum of the weights of the solids of corn sirup, dried corn sirup, glucose sirup, and dried glucose sirup, in case two or more of these are used, does not exceed one-fourth of the total weight of the solids of the combined sweetening ingredients.

(6) Any mixture of the optional ingredients designated in subparagraphs (4) and (5) of this paragraph.

(e) The name of the canned pineapple prepared from each of the optional forms of pineapple ingredient specified in paragraph (a) of this section is as follows:

(1) If the optional form is one designated in paragraph (a) (1) to (7), inclusive, of this section, the name is "pineapple," preceded or followed, for each of the indicated optional forms of units, by the words here specified:

- (a) (1) "sliced" or "slices."
- (a) (2) "half sliced" or "half slices."

(a) (3) "broken sliced" or "broken slices."

(a) (4) "tidbits."

(a) (5) "chunks."

(a) (6) "cubes" or "diced."

(a) (7) "spears" or "fingers."

(2) If the optional form is one designated in paragraph (a) (8) of this section, the name is "pineapple," preceded or followed by the word "crushed." If the crushed pineapple, when drained by the method specified in § 27.51(b) (1), yields not less than 73 percent but less than 78 percent by weight of drained material, the word "crushed" or the words "crushed pineapple" in the name of the food may be preceded or followed by the words "heavy pack," and if it yields 78 percent or more by weight of drained material the word "crushed" or the words "crushed pineapple" may be preceded or followed by the words "solid pack."

(f) (1) The labels of canned pineapple prepared from the optional forms of pineapple specified in paragraph (a) (1) to (7), inclusive, of this section shall bear the name of the optional packing medium used as specified in paragraph (b) of this section, preceded by "in" or "packed in." Whenever the optional packing medium pineapple juice, as specified in paragraph (b) (2) of this section, is used, the words "pineapple juice" may be preceded by the word "unsweetened." The labels of crushed pineapple canned with the optional packing media specified in paragraph (b) (2) to (6), inclusive, of this section shall bear the statement "in -----" or "packed in -----," the blank being filled in with the name of the optional packing medium used as specified in paragraph (b) of this section, but in lieu of such statement crushed pineapple canned with pineapple juice (paragraph (b) (2) of this section) may be labeled "unsweetened," and crushed pineapple canned with pineapple juice and sugar may be labeled "lightly sweetened" or "heavily sweetened" or "extra heavily sweetened," if the drained liquid conforms to the density ranges specified in paragraph (c) of this section for light sirup, heavy sirup, or extra heavy sirup, respectively.

(2) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified, showing the optional ingredients used, shall conspicuously precede or follow the name, without intervening written, printed, or graphic matter, except that the adjectival designation of the State, Territory, or possession of the United States or of the foreign country in which the pineapples were grown may intervene.

§ 27.51 Canned pineapple; quality; label statement of substandard quality.

(a) The standard of quality for canned pineapple is as follows:

(1) In the case of broken slices, not more than 10 percent of the drained weight may consist of pieces having an arc of less than 90° and not more than 5 percent of the drained weight of the contents of the container, as determined by the method prescribed in paragraph (b) (1) of this section:

(i) Consists of pieces that measure in thickness less than $\frac{1}{16}$ inch or more than 1 inch; or

(ii) Consists of pieces that measure less than $\frac{3}{4}$ inch in width as measured from the outer edge to the inner edge.

(2) (i) In the case of cubes or diced pineapple, not more than 10 percent of the drained weight consists of units of such size that they pass through the screen when tested by the method prescribed in paragraph (b) (4) of this section; and

(ii) Not more than 15 percent of the drained weight consists of pieces weighing more than $\frac{3}{32}$ ounce each.

(3) In the case of chunks, not more than 15 percent of the drained weight consists of pieces weighing less than $\frac{3}{16}$ ounce each.

(4) (i) In the case of slices and spears, the drained weight of the largest unit in the container is not more than 1.4 times the weight of the smallest.

(ii) In the case of half slices, the drained weight of the largest unit in the container is not more than 1.75 times the weight of the smallest (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through).

(5) In the case of broken slices, not more than 5 percent of the drained weight of the contents of the can consists of broken slices having an outside diameter differing by as much as $\frac{3}{8}$ inch from that of those present in greatest proportion by weight.

(6) In the case of tidbits, not more than 15 percent of the drained weight consists of tidbits each of which weighs less than three-fourths as much as the average weight of all the untrimmed tidbits in the container.

(7) In the case of slices and half slices, not more than $7\frac{1}{2}$ percent by count of the units in a container may be excessively trimmed, but in any container having not more than 10 units, one unit may be excessively trimmed, and in any container having more than 10 units, but not more than 27 units, two units may be excessively trimmed. Such slices and half slices are excessively trimmed if the portion trimmed away exceeds 5 percent of the apparent physical bulk of the perfectly formed unit and if such trimming destroys the normal circular shape of the outer or inner edge of the unit.

(8) In the case of broken slices and spears, not more than 15 percent by count of the total units in the container, and, in the case of tidbits, not more than 15 percent of the drained weight, consist of units excessively trimmed. Broken slices, spears, and tidbits are excessively trimmed if the normal shape of these units is destroyed by such trimming.

(9) In the case of slices, half slices, broken slices, spears, chunks, cubes, and tidbits, not more than $12\frac{1}{2}$ percent by count of the units in any container may be blemished, but in containers having not more than five units, one unit may be blemished; in containers having more than five units but not more than 10 units, two units may be blemished; and in containers having more than 10 units,

but not more than 32 units, four units may be blemished. Blemishes include:

(i) Any of the following, if in excess of $\frac{1}{16}$ inch in the longest dimension on the exposed surface of the unit: Eyes, pieces of shell, brown spots.

(ii) Deep fruit eyes.

(iii) Bruised portions.

(iv) Other abnormalities that it is possible to detect in good commercial practice before sealing in the containers.

(10) In the case of crushed pineapple, not more than $1\frac{1}{4}$ percent of the drained weight of the contents of the can consists of fragments bearing such blemishes.

(11) In the case of spears, not more than one unit per container is mashed; in the case of slices and half slices, not more than one unit in containers of 25 units or less, and not more than three units in containers of more than 25 units are mashed; in the case of broken slices, not more than 5 percent by count of the units in the container is mashed; in the case of chunks, not more than three of the units in containers of less than 70 units, or 5 percent of the units in containers of 70 units or more, is mashed; in the case of tidbits, not more than three of the units in containers of less than 150 units, or 2 percent of the units in containers of 150 units or more, is mashed. (A unit that has lost its normal shape because of ripeness and which bears no mark of mechanical injury shall not be considered as mashed.)

(12) In the case of all forms of canned pineapple, not more than 1.1 ounces of core is contained in 1 pound of drained fruit, as determined by the method prescribed in paragraph (b) (8) of this section.

(13) In the case of all forms of canned pineapple, not more than 1.35 grams of acid, as determined by the method prescribed in paragraph (b) (9) of this section and calculated as anhydrous citric acid, is contained in 100 milliliters of the liquid drained from the product 15 days or more after the pineapple is canned.

(14) In the case of crushed pineapple, the drained weight of pineapple, as determined by the method prescribed in paragraph (b) (1) of this section, is not less than 63 percent of the net weight of the contents of the container.

(b) The methods to be employed to determine whether canned pineapple meets the requirements of paragraph (a) of this section are as follows:

(1) Determine the drained weight of the canned pineapple by the following procedure: Pour the contents of the can on a round sieve made with No. 8 woven-wire cloth complying with the specifications for such cloth in Table I of "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the United States Department of Commerce, National Bureau of Standards. Use a sieve 8 inches in diameter for containers of less than 3 pounds net contents and a sieve 12 inches in diameter for larger containers. Incline the sieve, without shifting the contents, to facilitate draining. Allow to drain for 2 minutes from the time the contents of the container are poured on the sieve. Immediately transfer the drained pineapple to a clean,

dry, tared pan by inverting the sieve over the pan in one moderately rapid motion, and determine the weight of the drained pineapple.

(2) In the case of broken slices and spears, check the dimensions and weight of each unit against the requirements of paragraph (a) (1), (4), and (5) of this section.

(3) In the case of cubes, chunks, and tidbits, check the weight of the units against the requirements of paragraph (a) (2) (ii), (3), and (6) of this section.

(4) Test cubes for compliance with paragraph (a) (2) (i) of this section by placing the cubes, a few at a time, on the meshes of a sieve designated as $\frac{1}{16}$ inch in Table I of "Standard Specifications for Sieves," described in subparagraph (1) of this paragraph. After shaking gently, remove those that remain on the sieve before testing the next portion. Continue portionwise until all units are tested, then determine the aggregate weight of those units that have passed through the sieve.

(5) Except in the case of cubes, chunks, and crushed pineapple, inspect all the units in the container to determine those that have been excessively trimmed, as defined in paragraph (a) (7) or (8) of this section.

(6) Except in the case of crushed pineapple, segregate and count each unit that is blemished, as defined in paragraph (a) (9) of this section. In the case of crushed pineapple, segregate each fragment of crushed pineapple bearing a blemish and determine the aggregate weight of such fragments to determine compliance with paragraph (a) (10) of this section.

(7) Except in the case of cubes and crushed pineapple, count the total units in the container and the number of mashed units, to determine compliance with paragraph (a) (11) of this section.

(8) In the case of each form of optional pineapple ingredient, identify and separate any core material cleanly from each of the units in the container, and weigh the aggregate of such core material. Calculate the weight of the core material per pound of drained fruit, to determine compliance with paragraph (a) (12) of this section.

(9) Determine the total acidity of the drained liquid by titration, using the following method: Measure with a pipette 10 milliliters of the unfiltered drained liquid into a 250-milliliter Erlenmeyer flask. Add 25 milliliters of freshly boiled, distilled water and 0.3 milliliter of 1-percent phenolphthalein solution. Titrate with one-tenth normal sodium hydroxide solution to a faint, permanently pink coloration. Multiply the number of milliliters of one-tenth normal sodium hydroxide required by 0.064 to calculate the number of grams of anhydrous citric acid per 100 milliliters of drained liquid.

(c) If the quality of canned pineapple falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3(a) of this subchapter, in the manner and form therein specified. However, if the quality of canned pineapple falls below

standard with respect to only one of the factors of quality specified in paragraph (a) (1) through (14) of this section, there may be substituted for the second line of such general statement of substandard quality a new line as specified below, after the number corresponding to each subparagraph of paragraph (a) of this section that such canned pineapple fails to meet, as follows:

- (1) "Small broken pieces" or "Thick broken pieces," as the case may be.
- (2) (i) "Irregular small pieces";
- (ii) "Mixed sizes." (These words are to be used only where the cubes are of mixed sizes and the tolerance for units larger than maximum size is exceeded.)
- (3) "Irregular small pieces."
- (4) "Mixed sizes."
- (5) "Mixed sizes."
- (6) "Mixed sizes."
- (7) "Excessively trimmed."
- (8) "Excessively trimmed."
- (9) "Blemished" or "Contains blemished pieces."
- (10) "Blemished" or "Contains blemished pieces."
- (11) "Mashed units" or "Contains mashed units."
- (12) "Poorly cored" or "Excessive core."
- (13) "Excessively tart."
- (14) "Contains excess liquid."

§ 27.52 Canned crushed pineapple; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned crushed pineapple is a fill of not less than 90 percent of the total capacity of the container, as determined by the general method for fill of container prescribed in § 10.2(b) of this subchapter.

(b) If canned crushed pineapple falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.3(b) of this subchapter, in the manner and form therein specified.

§ 27.54 Canned pineapple juice; identity; label statement of optional ingredients.

(a) Canned pineapple juice is the unconcentrated juice from the flesh or parts thereof, or from the cores, or from both such flesh and cores, of mature pineapples. Canned pineapple juice may be extracted cold, or heat may be used in the extraction, but in neither case is water added. Canned pineapple juice contains finely divided insoluble solids, but it does not contain pieces of shell, seeds, or other coarse or hard substances. It may be sweetened with sugar. Before or after sealing in the container, canned pineapple juice is so processed by heat as to prevent spoilage.

(b) The name of the food is "pineapple juice." If no sugar is added, the word "unsweetened" may immediately precede or follow the words "pineapple juice."

(c) If the optional sweetening ingredient sugar is used, the label shall bear the statement "sugar added."

(d) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words herein specified, showing the optional ingredient used, shall conspicuously precede or follow the name, without intervening written, printed, or graphic matter, except that the adjectival designation of the State, Territory, or possession of the United States or of the foreign country in which the pineapples were grown may intervene.

§ 27.55 Canned pineapple juice; quality; label statement of substandard quality.

(a) The standard of quality for canned pineapple juice is as follows:

- (1) The soluble solids content is not less than 10.5° Brix, as determined by the method prescribed in paragraph (b) (1) of this section.
- (2) The acidity, as determined by the method prescribed in paragraph (b) (2) of this section, is not more than 1.35 grams of anhydrous citric acid per 100 milliliters of the juice.
- (3) The ratio of the degrees Brix to total acidity, as determined by the method prescribed in paragraph (b) (3) of this section, is not less than 12.
- (4) The quantity of finely divided "insoluble solids," as determined by the method prescribed in paragraph (b) (4) of this section, is not less than 5 percent nor more than 30 percent.

(b) The methods referred to in paragraph (a) of this section are as follows:

- (1) Determine the degrees Brix of the canned pineapple juice by the method prescribed in "Official Methods of Analysis of the Association of Official Agricultural Chemists," "Solids—By Means of Spindle—Official" (Eighth Edition, page 533, section 29.9).
- (2) Determine the total acidity of the canned pineapple juice by titration by the method prescribed in § 27.51(b) (9).
- (3) Divide the degrees Brix determined as prescribed in subparagraph (1) of this paragraph by the grams of anhydrous citric acid per 100 milliliters of juice, determined as prescribed in subparagraph (2) of this paragraph, and report the results as ratio of degrees Brix to total acidity.

(4) Determine the quantity of "insoluble solids" in canned pineapple juice as follows: Measure 50 milliliters of thoroughly stirred pineapple juice into a cone-shaped graduated tube of the long-cone type, measuring approximately 4³/₁₆ inches from tip to top calibration and having a capacity of 50 milliliters. Place the tube in a suitable centrifuge the approximate speed of which is related to diameter of swing in accordance with the table immediately below. The word "diameter" means the over-all distance between the tips of opposing centrifuge tubes in operating position.

Diameter (inches):	Approximate revolutions per minute
10	1,609
10½	1,570
11	1,534
11½	1,500
12	1,468
12½	1,438
13	1,410
13½	1,384
14	1,359
14½	1,336
15	1,313
15½	1,292
16	1,271
16½	1,252
17	1,234
17½	1,216
18	1,199
18½	1,182
19	1,167
19½	1,152
20	1,137

The milliliter reading at the top of the layer of "insoluble solids," after centrifuging 3 minutes, is multiplied by two to obtain the percentage of "insoluble solids."

(c) If the quality of canned pineapple juice falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.3 (a) of this subchapter, in the manner and form therein specified.

§ 27.56 Canned pineapple juice; fill of container; label statement of substandard fill.

(a) The standard of fill of container for canned pineapple juice is a fill of not less than 90 percent of the total capacity of the container, as determined by the general method for fill of container prescribed in § 10.2(b) of this chapter.

(b) If canned pineapple juice falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the statement of substandard fill specified in § 10.3(b) of this chapter, in the manner and form therein specified.

§ 27.60 Canned prune juice; identity; label statement of optional ingredients.

(a) Canned prune juice is the food prepared from a water extract of dried prunes and contains not less than 18.5 percent by weight of water-soluble solids extracted from dried prunes. The quantity of prune solids may be adjusted by the concentration, dilution, or both, of the water extract or extracts made. Such food may contain one or more of the optional acidifying ingredients specified in paragraph (b) (1) of this section, in a quantity sufficient to render the food slightly tart, and it may contain honey added within the quantitative limits prescribed by paragraph (b) (2) of this section. Such food is sealed in a container and so processed by heat, before or after sealing, as to prevent spoilage.

(b) The optional ingredients referred to in paragraph (a) of this section are:

(1) One or any combination of two or more of the following acidifying ingredients:

- (i) Lemon juice.
- (ii) Lime juice.
- (iii) Citric acid.

(2) Honey, in a quantity not less than 2 percent and not more than 3 percent by weight of the finished food.

(c) (1) The name of the food is "Prune juice—A water extract of dried prunes." For the purposes of the Federal Food, Drug, and Cosmetic Act concerning the label declaration of the name of the food; the explanatory statement "A water extract of dried prunes" may appear immediately below the words "prune juice," but there shall be no intervening written, printed, or graphic matter, and the type used for the words "A water extract of dried prunes" shall be of the same style and not less than half the point size of the type used for the words "prune juice."

(2) (i) When one or more of the acidifying ingredients specified in paragraph (b) (1) of this section are used, the label shall bear the statement "----- added" or "with added -----" the blank being filled in with the name or names of the optional ingredients used.

(ii) When honey, as specified in paragraph (b) (2) of this section, is used the label shall bear the statement "with ----- honey" or "----- honey added," the blank to be filled in with the percent by weight of the honey in the finished food or with the statement "between 2 and 3%."

(iii) When one or more of the ingredients designated in paragraph (b) (1) of this section and the ingredient designated in paragraph (b) (2) of this section are used, the statements specified in subdivisions (i) and (ii) of this subparagraph may be combined, as for example, "with lemon juice and between 2 and 3% honey added."

(3) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words specified in this paragraph, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 27.70 Canned figs; identity; label statement of optional ingredients.

(a) Canned figs is the food prepared from one of the optional fig ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section, to which citric acid or lemon juice or concentrated lemon juice is added, if necessary, in such quantity as to reduce the pH of the finished product to 4.9 or below. One or more of the following optional ingredients may be added to flavor, garnish, or season the canned figs:

- (1) Spice.
- (2) Flavoring, other than artificial flavoring.
- (3) A vinegar.
- (4) Unpeeled segments of citrus fruits.
- (5) Salt.

Such food is sealed in a container and so processed by heat as to prevent spoilage.

(b) The optional fig ingredients referred to in paragraph (a) of this section are prepared from mature figs of the light or dark varieties. Figs (or whole figs), split figs (or broken figs), or any combination thereof are optional fig ingredients. A fig (whole fig) is one that is whole or only slightly cracked and retains its natural conformation without exposing the interior. A split fig (or broken fig) is one that is open to such an extent that the seed cavity is exposed, the shape of the fruit may be distorted, and the fruit may or may not be broken apart into entirely separate pieces.

(c) (1) The optional packing media referred to in paragraph (a) of this section are:

- (i) Water.
- (ii) Light sirup.
- (iii) Heavy sirup.
- (iv) Extra heavy sirup.

(2) Each of the packing media in subparagraph (1) (i) through (iv) of this paragraph, inclusive, is prepared with water and a saccharine ingredient. The saccharine ingredient from which packing media in subparagraph (1) (ii) through (iv) of this paragraph, inclusive, are prepared is one of the following: Sugar; invert sugar sirup; any combination of sugar or invert sugar sirup and dextrose in which the weight of the solids of the dextrose used is not more than one-half the weight of the solids of the sugar or invert sugar sirup used; any combination of sugar or invert sugar sirup and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third the weight of the solids of the sugar or invert sugar sirup used; or any combination of sugar or invert sugar sirup, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used is not more than the weight of the solids of the sugar or invert sugar sirup used.

(3) The respective densities of packing media in subparagraph (1) (ii) to (iv), of this paragraph, inclusive, as measured on the Brix hydrometer 15 days or more after the figs are canned, are within the range prescribed for each in the following list:

Name of packing medium:	Brix measurement
Light sirup-----	16° or more but less than 21°.
Heavy sirup-----	21° or more but less than 26°.
Extra heavy sirup--	26° or more but less than 35°.

(d) The label shall name the optional fig ingredient used, as specified in paragraph (b) of this section (where combinations of figs and split figs are used, the ingredient present in larger proportion by weight shall be named first), and the name whereby the optional packing medium is designated in paragraph (c) of this section, preceded by "In" or "Packed in." When any of the optional ingredients permitted by one of the following specified subparagraphs of paragraph (a) of this section is used the label shall bear the words set forth, after the number of such subparagraph:

(a) (1) "Spiced" or "Spice added" or "With added spice," or, in lieu of the word "spice," the common name of the spice.

(a) (2) "Flavoring added" or "With added flavoring" or, in lieu of the word "flavoring" the common name of the flavoring.

(a) (3) "Seasoned with vinegar" or "Seasoned with ----- vinegar," the blank being filled in with the name of the vinegar used.

(a) (4) "With added -----," the blank being filled in with the name or names of the citrus segment or segments used.

(a) (5) "Seasoned with salt" or "Salt added."

When the addition of lemon juice (including concentrated lemon juice) or citric acid lowers the pH of the canned figs to less than 4.3, the label shall bear the statement "With added lemon juice" or "With added concentrated lemon juice" (if such is used) or "With added citric acid." When two or more of the optional ingredients specified in paragraph (a) of this section are used, such words may be combined, as for example, "With added spices, orange slices, and lemon juice."

(e) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words herein specified, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that the varietal name of the figs may so intervene.

§ 27.73 Artificially sweetened canned figs; identity; label statement of optional ingredients.

(a) Artificially sweetened canned figs is the food which conforms to the definition and standard of identity prescribed for canned figs by § 27.70, except that in lieu of a packing medium specified in § 27.70 (c), the packing medium used is water artificially sweetened with saccharin, sodium saccharin, calcium cyclamate, sodium cyclamate, or any combination of two or more of these. Such packing medium may be thickened with pectin.

(b) (1) The specified name of the food is "artificially sweetened -----," the blank being filled in with the name prescribed by § 27.70 for canned figs having the same optional fig ingredient.

(2) The artificially sweetened food is subject to the requirements for label statement of optional ingredients used, as prescribed for canned figs by § 27.70. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin."

§ 27.101 Frozen concentrate for lemonade; identity; label statement of optional ingredients.

(a) Frozen concentrate for lemonade is the frozen food prepared from one or both of the lemon juice ingredients specified in paragraph (b) of this section, together with one of the sweetening ingredients specified in paragraph (c) of this section. Water may be added, and it may contain the optional ingredient specified in paragraph (d) of this section. The product contains not less than 43.0 percent by weight of soluble solids taken as the sucrose value determined by refractometer and corrected for acidity as

given in "Refractometric Determination of Soluble Solids in Citrus Juices," by Stevens and Baier, Industrial and Engineering Chemistry, Analytical Edition, Volume 11, page 447 (1939). When the product is diluted according to directions for making lemonade, which shall appear on the label, the acidity of the lemonade, calculated as anhydrous citric acid, shall be not less than 0.70 gram per 100 milliliters, and the soluble solids, measured as described for the concentrate, shall be not less than 10.5 percent by weight.

(b) The lemon juice ingredients referred to in paragraph (a) of this section are:

(1) Lemon juice or frozen lemon juice or a mixture of these.

(2) Concentrated lemon juice or a mixture of these.

For the purposes of this section, lemon juice is the undiluted juice expressed from mature lemons of an acid variety; and concentrated lemon juice is lemon juice from which part of the water has been removed.

(c) The sweetening ingredients referred to in paragraph (a) of this section are:

(1) Sugar or invert sugar sirup or any mixture of these.

(2) Any mixture consisting of sugar or invert sugar sirup or both with dextrose, corn sirup, dried corn sirup, glucose sirup, dried glucose sirup, or any two or more of these: *Provided*, That the solids of the sugar or invert sugar sirup or both amount to not less than two-thirds of the weight of the total solids of the mixture.

(d) The optional ingredient referred to in paragraph (a) of this section is lemon oil or concentrated lemon oil or both.

(e)(1) If the optional ingredient specified in paragraph (e) of this section is used, the label shall bear the statement "_____ added" or "with added _____," the blank being filled in with the name "lemon oil" or "concentrated lemon oil," or where both are used, with the names "lemon oil and concentrated lemon oil."

NOTE: The provisions of § 27.101(e)(1) were stayed, June 26, 1959, 24 F.R. 5216.

(2) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement specified in subparagraph (1) of this paragraph shall conspicuously precede or follow the name, without intervening written, printed, or graphic matter.

§ 27.102 Frozen concentrate for colored lemonade; identity; label statement of optional ingredients.

(a) Frozen concentrate for colored lemonade conforms to the definition and standard of identity and is subject to the requirement for label statement of optional ingredients prescribed for frozen concentrate for lemonade by § 27.101, except that it is colored with artificial coloring or with one or more of the following optional ingredients: Grape juice, cranberry juice, loganberry juice, beet juice, or any such juice that has been concentrated.

(b)(1) The name of the food is "Frozen concentrate for _____ lemonade," the blank being filled in with the word describing the color; as, for example, "Frozen concentrate for pink lemonade."

(2) If artificial coloring is used, the label shall bear the statement "artificially colored."

(3) If one or more of the optional juice ingredients named in paragraph (a) of this section is used, the label shall bear the statement "colored with _____," the blank being filled in with the name of the juice or concentrated juice used; as, for example, "colored with grape juice" or "colored with concentrated cranberry juice and beet juice."

NOTE: The provisions of § 27.102(b)(3) were stayed, June 26, 1959, 24 F.R. 5217.

[F.R. Doc. 59-10922; Filed, Dec. 23, 1959; 8:46 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6434]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Mandel Brothers, Inc.

Subpart—*Advertising falsely or misleadingly*: § 13.155 *Prices*: Comparative; usual as reduced, special, etc. Subpart—*Invoicing products falsely*: § 13.1108 *Invoicing products falsely*: Fur Products Labeling Act. Subpart—*Misbranding or mislabeling*: § 13.1212 *Formal regulatory and statutory requirements*: Fur Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure*: § 13.1852 *Formal 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) [Modified cease and desist order, Mandel Brothers, Inc., Chicago, Ill., Docket 6434, September 29, 1959]

Order rephrasing, in accordance with the order of the Supreme Court of May 4, 1959, 359 U.S. 385, affirming as thus modified, the Commission's order of July 5, 1957, 22 F.R. 6272, requiring cessation of false invoicing, false advertising, and misbranding of fur products.

The Commission's modified order to cease and desist is as follows:

Now, therefore: *It is hereby ordered*, That respondent, Mandel Brothers, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or in part of fur

which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from—

A. Misbranding fur products by—

1. Failing to affix labels to fur products showing each element of information required by the Act;

2. Setting forth on labels attached to fur products—

(a) Required information in abbreviated form or in handwriting;

(b) Non-required information mingled with required information.

B. Falsely or deceptively invoicing fur products by—

1. Failing to furnish invoices to purchasers of fur products showing each element of information required by the Act;

2. Setting forth required information in abbreviated form;

3. Failing to show the item number or mark of fur products on the invoices pertaining to such products.

C. Falsely or deceptively advertising fur products through the use of any advertisement, 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, and 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 respondent has usually and customarily sold such products in the recent regular course of its business;

D. Making pricing claims or representations of the type referred to in Paragraph C above, unless there is maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

By "Modified Order To Cease and Desist", compliance was required as follows:

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

Issued: September 29, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, Secretary.

[F.R. Doc. 59-10920; Filed, Dec. 23, 1959; 8:45 a.m.]

[Docket 7146 o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Trans-Continental Clearing House, Inc., et al.

Subpart—*Advertising falsely or misleadingly*: § 13.15 *Business status, advantages, or connections*: advertising and promotional services; bonded business; financing activities; service; § 13.185 *Refunds, repairs, and replace-*

ments; § 13.205 *Scientific or other relevant facts*; § 13.225 *Services*.

(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, Trans-Continental Clearing House, Inc., et al., Chicago, Ill., Docket 7146, October 20, 1959]

In the Matter of Trans-Continental Clearing House, Inc., a Corporation, and William G. Dudley and William Bodemer, Individually and as Officers of Said Corporation

This case was heard by a hearing examiner on the complaint of the Commission charging a Chicago concern with using a variety of deceptive representations to obtain advance fees for advertising real estate and with failing to make promised refunds when it failed to sell the property.

Complaint counsel's appeal from the initial decision was granted by the Commission which directed modification thereof and on October 20 adopted the initial decision as modified as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent, Trans-Continental Clearing House, Inc., a corporation, and its officers, and respondents, William G. Dudley and William Bodemer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents have available prospective buyers who are interested in the purchase of specific properties;
2. That property listed with respondents will be sold as a result of their efforts;
3. That property sought to be listed is underpriced or that the asking price should be raised, unless such is the fact;
4. That respondents' sales representatives are bonded or insured;
5. That respondents will finance or assist in financing the purchase of listed property;
6. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;
7. That property listed with respondents will be nationally advertised in newspapers, financial or business publications, by radio or television broadcasts, through real estate brokers associated with respondents, or by any other means.

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

It is further ordered, That respondents, Trans-Continental Clearing House, Inc., William G. Dudley and William Bodemer, 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 herein.

Issued: October 20, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 59-10921; Filed, Dec. 23, 1959;
8:46 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER O—RIGHTS-OF-WAY—ROADS

PART 161—RIGHTS-OF-WAY OVER INDIAN LANDS

Permission To Survey and Commence Construction

Section 161.4 is amended to permit the substitution of a surety bond in lieu of a cash deposit to accompany an application for a right of way. Such bond may also serve as surety to accompany other applications, if adequate in amount.

Section 161.5 is amended to permit a similar substitution to cover estimated damages occasioned by construction.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. However, any delay in publication of this regulation will only result in hardship to the persons intended to be benefited.

The amendments to the regulation become effective at the beginning of the calendar day on which they are published in the FEDERAL REGISTER.

ELMER F. BENNETT,
Acting Secretary of the Interior.

DECEMBER 17, 1959.

Section 161.4 is amended to read as follows:

§ 161.4 Permission to survey.

Anyone desiring to obtain permission to survey a right-of-way upon and across restricted lands must file a written application therefor with the Superintendent. The application shall adequately describe the proposed project, and it shall be accompanied by the written consent of the landowners as required by § 161.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover double the estimated damages which may be sustained as a result of the survey. With the approval of the Superintendent, a surety bond may be substituted in lieu of a check or money order accompanying an application. Such bond may serve as surety to accompany other applications by the same applicant made under this section, if adequate in

amount. An application filed by a corporation must be accompanied by proof of corporate existence and of compliance with State laws entitling the applicant to operate in the State in which the restricted land is situated. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Department an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part, the Superintendent may grant the applicant written permission to survey.

Section 161.5 is amended to read as follows:

§ 161.5 Permission to commence construction.

Subject to the provisions of § 161.3, permission to proceed with construction work on a right-of-way may be granted by the Superintendent at the same time or after permit to survey is issued and before full compliance is made with the regulations in this part, provided the applicant deposits with the Superintendent in advance such amount, in addition to that deposited in accordance with § 161.4, or increases the surety bond in such amount, as will be sufficient to equal twice the estimated damages which may result from the survey and construction, and agrees in writing to comply promptly with the regulations in this part. The amount of the deposit, if the applicant is an agency of the Federal or of a State Government, will be a sum to cover only the estimated damages whenever it be shown to the satisfaction of the Superintendent that the funds of the applicant are not available for the deposit of the greater amount. Each deposit shall be held in a "special deposit" account until the actual damages have been determined and the application for the right-of-way has been approved.

[F.R. Doc. 59-10923; Filed, Dec. 23, 1959;
8:46 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 779—RETAIL OR SERVICE ESTABLISHMENT AND RELATED EXEMPTIONS

Application of Exemption To Liquefied-Petroleum-Gas Dealers

After investigation of the sales practices of liquefied-petroleum-gas dealers

to determine the types of sales or services which are recognized as retail in this industry, and the types not recognized as retail within the meaning of section 13(a)(2) of the Fair Labor Standards Act of 1938, notice was published in the October 10, 1957, issue of the FEDERAL REGISTER (22 F.R. 8068) that the Administrator of the Wage and Hour and Public Contracts Divisions proposed to amend 29 CFR Part 779 to reflect the recognition in the industry on this question. Interested persons were provided opportunity to submit their data, views, or arguments pertaining thereto.

Comments have been received from several interested persons. After consideration of all relevant matter presented, I conclude that the amendment should be adopted as proposed with the exception that the added regulation will be designated § 779.38 rather than § 779.37 as indicated in the proposal.

Accordingly, pursuant to section 3 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1002), and under the authority of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.), Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), and General Order No. 45-A (15 F.R. 3290), 29 CFR Part 779 is hereby amended as follows:

1. A new section designated § 779.38 is hereby added to read as follows:

§ 779.38 Application of the section 13(a)(2) exemption to liquefied-petroleum-gas dealers.

(a) It is the purpose of this section to show generally how the principles governing the application of the section 13(a)(2) exemption apply to liquefied-petroleum-gas dealers' establishments.

(b) In applying the tests of the section 13(a)(2) exemption, all sales to the ultimate consumer of liquefied-petroleum-gas, whether delivered in portable cylinders or in bulk to the customer's storage tanks, are recognized as retail in the industry except the following: (1) Sales in single lot deliveries exceeding 1,000 gallons; (2) sales made on a competitive bid basis (this term covers sales made pursuant to an invitation to bid, particularly sales to Federal, state and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included); and (3) sales for use in the production of a specific product in which the gas is an essential ingredient or principal raw material, such as sales of liquefied-petroleum-gas for the production of chemicals and synthetic rubber.

(c) As used in this section, liquefied-petroleum-gas means butane, propane and mixtures of butane and propane gases.

(d) The sale or repair of a tank for the storage of liquefied-petroleum-gas is recognized as retail in the industry, except: (1) Any tank exceeding 1,000 gallons in capacity; (2) any tank sold or repaired on the basis described in paragraph (b)(2) of this section or for the purposes described in paragraph

(b)(3) of this section; and (3) sales in quantity larger than involved in the ordinary sales to a farm or household customer.

(e) Sales and installation of units for converting tractors, trucks, pumps, stoves, furnaces and other equipment and appliances to the use of liquefied-petroleum-gas, are recognized as retail sales except: (1) Sales of the installation of such conversion units which involve substantial modification of the appliance or equipment; (2) sales and installations of such units to be used in industrial machinery or equipment; and (3) sales and installations made on the basis described in paragraph (b)(2) of this section or in quantity as described in paragraph (d)(3) of this section.

(f) If more than 50 percent of the retail or service establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and if 75 percent or more of the annual dollar volume of sales of goods or services, or both, which are not for resale and are recognized as retail sales or services in the industry as herein set forth, the exemption under section 13(a)(2) will apply to all employees employed by the establishment.

(52 Stat. 1060, as amended; 29 U.S.C. 201-219)

Signed at Washington, D.C., this 16th day of December 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-10927; Filed, Dec. 23, 1959; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLE

[Ex Parte No. MC-56]

PART 172—INFORMATION REQUIRED ON RECEIPTS AND BILLS

Issuance of Expense Bills by Motor Common Carriers Performing Charter Operations

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D.C., on the 10th day of December A.D. 1959.

It appearing that a notice of proposed rule making dated August 7, 1959 (24 F.R. 6783) was issued embodying the substance of regulations pertaining to the issuance of expense bills by motor common carriers performing charter operations in interstate or foreign commerce;

It further appearing that pursuant to such notice and the invitation contained therein persons desiring to participate in the proceeding have submitted written statements containing data, views or

arguments in connection with the scope and text of such regulations;

And it further appearing that full consideration has been given to the matters and things within the scope of the notice of August 7, 1959 in accordance with section 4 of the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1003) and full consideration has been given to the data, views, and arguments of interested persons with respect thereto, and the division on the date hereof has made and filed a report herein setting forth the general basis and purpose of the rules adopted and its findings and conclusions, which report is hereby made a part hereof;

It is ordered, That the regulations designated as § 172.5 of this part, as hereafter set forth, are hereby approved, adopted, and prescribed.

§ 172.5 Expense bills for transportation of chartered parties.

(a) *Form and issuance of bill.* Every common carrier of passengers by motor vehicle shall, when collecting charges for transportation of any chartered party in interstate or foreign commerce, issue an expense bill and cause to be shown on the face thereof the following:

(1) Serial number, which shall consist of one of a series of consecutive numbers assigned in advance and imprinted on the form of expense bill.

(2) Name of carrier.

(3) Name of person paying the charges together with name of the organization, if any, for which transportation is performed.

(4) Date or dates upon which transportation is performed.

(5) Origin, destination and general routing of trip.

(6) Number of vehicles used, and identification and seating capacity of each.

(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, which shall be separately stated.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Charges for transportation.

(11) Itemized charges for special services, if any, performed by the carrier.

(12) Itemized charges for other expenses, such as toll charges, parking fees, layover time, etc.

(13) Total charges assessed and collected.

(b) *Records to be retained.* A record shall be kept by the carrier of all expense bills by retaining for the period prescribed in the regulations governing the destruction of records, part 203 of this title, a copy of each such bill which is issued, and if any form of numbered expense bill is spoiled, voided, or unused for any reason a copy thereof, or a written record of its disposition, shall be retained for a like period.

(c) *Definitions.* As used in this § 172.5: (1) The term "chartered party" shall mean a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge

for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group; and (2) the term "common carrier of passengers by motor vehicle" shall include both those specifically authorized to perform charter operations and those authorized to transport chartered parties under section 208(c) of the Interstate Commerce Act (49 U.S.C. 308(c)) as an incident to the right to transport passengers over a regular route or routes.

(Secs. 204(a) (1) and (6), 216, 220, 49 Stat. 546, 558, 563, as amended; 49 U.S.C. 304, 316, 320)

It is further ordered, That this order shall be effective February 1, 1960.

Notice of this order shall be given to motor carriers, other persons of interest, and to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Division 1.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 59-10926; Filed, Dec. 23, 1959;
8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 13149; FCC 59-1281]

PART 1—PRACTICE AND PROCEDURE

Investment of Pension and Benefit Funds

In the matter of amendment of Annual Reports Form M for Class A and Class B Telephone Companies, Form O for Wire-Telegraph and Ocean-Cable Carriers, and Form R for Radiotelegraph Carriers, to revise the schedules showing information regarding the investment of pension and benefit funds; Docket No. 13149.

1. On August 5, 1959, the Commission adopted a Notice of Proposed Rule Making in the above-entitled matter, which was published in the FEDERAL REGISTER on August 11, 1959 (24 F.R. 6438), in accordance with section 4(a) of the Administrative Procedure Act. This Notice presented for comment, on or before September 15, 1959 (with an additional allowance of ten days thereafter for reply comments) a proposal of the Commission to amend Schedule 60D, Investment of Pension and Benefit Funds, in Annual Report Form M and Schedule 338d, Investment of Pension and Benefit Funds, in Annual Report Forms O and R by inserting a new column calling for approximate market value of the investments and changing the column calling for face or par value of all investments to require the reporting of only face value of bonds and notes.

2. Timely comments were received from American Telephone and Telegraph Company (AT&T), filed on its own behalf and on behalf of the Bell System telephone companies, The Western Union Telegraph Company (WU), and the United States Independent Telephone Association (USITA). There were no replies to the original comments filed. No one requested a public hearing or oral argument.

3. AT&T agrees with the views expressed in the Notice that the showing of either the aggregate par value or the aggregate number of shares of capital stock furnishes no useful information and suggests that this fact could be recognized by amplifying the instructions to the schedule so as not to require the reporting of such aggregate amounts in column (c) of the present schedule. AT&T states that, while it has no strong objections to showing the Trustee's estimate of the approximate market value of investments, it does not believe that such information is very significant in reporting long-term investments. AT&T points out that this is particularly true of investments in debt securities which are usually held to maturity, in which case, variations in the market value would have no effect on their ultimate value or on the computation of the pension accrual rate. Furthermore, AT&T feels that publication of such estimates might actually lead some readers into erroneous conclusions. AT&T also points out that in the annual report form there is no requirement elsewhere for showing market value of company investments and that such a showing is not customarily made in published statements. AT&T is, therefore, of the opinion that the proposed amendment to show the market value of pension fund investments in Annual Report Form M should not be adopted. If such a requirement is adopted either with respect to all investments or only for capital stock, AT&T suggests that the information be shown as a footnote or in the last column of the schedule in order to show the facts first and the estimates last. AT&T's comments also include several other suggested revisions if the schedule is redesigned. These suggestions, together with revisions which have been made as a result thereof, are discussed in paragraphs 7 and 8, hereinafter.

4. WU, in its comments, states that it believes that the more or less permanent nature of a pension trust fund renders pointless the disclosure of market value, except as a matter of curiosity. WU suggests that, if disclosure of such information is made, it be confined to a footnote stating the approximate over-all market value of the investments in the fund, in lieu of the suggested columnar presentation identifying the market value by classes of securities. This suggestion is not adopted because it is preferable, wherever possible, to have information reported in the schedule by the selected classifications rather than to have it appear as a footnote. WU also states

that it would seem preferable to substitute the caption "Face Amount of Bonds and Other Obligations" for the proposed caption "Face Value of Bonds and Notes." This caption is being changed to read "Face Amount of Obligations."

5. USITA states that it is in agreement with all the changes suggested in the Notice and, in addition, requests that in the case of a group of companies having a joint fund, provision be made for filing pension fund information on a system basis and to permit the companies in the group to complete the schedule by cross reference to the system basis filing. This suggestion is not adopted. It is recognized that there may be some joint funds so administered that each participant could not report separately by classes its share in the investments carried in such joint fund. It is believed that each company participant should, where possible, report on its separate share or, if the fund investments are not separable, it should not be burdensome for each company to include the brief report required on the joint fund basis appropriately annotated as an inseparable joint fund.

6. As stated hereinbefore, AT&T commented that the estimated market value of debt securities is not particularly significant information. The Commission believes that the market value of debt securities is less significant for pension fund reporting purposes than the market value of capital stock. The market value of capital stocks may differ considerably from the cost so that in order to have available the realizable value of investments in the pension fund it is desirable to obtain the market value of the investments in capital stock. In contrast to debt securities, which are usually held to maturity, stocks must be sold in the open market to be converted into cash. Investment of pension funds in capital stock is a fairly recent development and it is believed appropriate to have data to follow the trend of experience of such investments. There is also authoritative support for showing market value of investments in stock in financial reports. The Accountants' Handbook indicates that the showing of market value for stock serves to make financial statements more informative and that investment trusts, insurance companies, and others have tended more and more to show market values for their investments in stocks. Therefore, the proposed column calling for the estimated market value of investments has been modified in the revised schedule to require the reporting of market value of capital stock only.

7. AT&T included in its comments the following additional suggestions for revision of Schedule 60D in Annual Report Form M:

A. In Instruction 2, combine the showing for bonds and notes into a single class for all obligations. This combination seems sensible since there is no important distinction between notes and bonds.

B. Eliminate Instruction 3 and revise Instruction 2 to permit the showing of aggregate data with respect to each sub-class of security. This will simplify the instructions.

C. Change the heading of present column (c) to read, "Face amount of obligations" to agree with the term used in the System of Accounts and elsewhere in the Report.

D. Change the heading of column (f) to read, "Approximate rate of yield based on column (e)" and eliminate Instruction 4 which recognizes that such approximations are necessary.

E. Eliminate column (d) which provides no useful information and change the heading of present column (e) to read, "Book value. (Show basis in note.)". The System of Accounts does not require the amortization of discount or premium on securities held as company investments and if the amounts are small and the term long, amortization should not be required.

F. Change caption of line 22 to read, "Accrued interest and dividends". This will provide for dividends declared but not received.

8. Most of the changes suggested by AT&T, as well as the other revisions discussed hereinbefore, are reflected in revised Schedule 60D in Annual Report Form M, as well as in revised Schedules 338d of Annual Report Forms O and R, which are identical to Schedule 60D. The following is a description of these schedules as they will now appear:

a. The instructions will read as follows:

1. Show amounts to the nearest dollar.
2. In column (d) show the amount of obligations on an amortized basis (except that minor amounts of discount and premium need not be amortized) and state in a note the basis of determining other book values.
3. Show in a note the basis of determining amounts shown in column (e).
4. If more than one fund is maintained, show data with respect to each additional fund on a separate sheet.

b. After the instructions there will be two lines reading as follows:

Name of fund:
Name and address of trustee:

c. The column headings will read as follows:

- (a): Description of Investments.
- (b): Face Amount of Obligations.
- (c): Cost (Excluding Accrued Interest).
- (d): Book Value.
- (e): Estimated Market Value of Stocks.
- (f): Approximate Rate of Yield Based on Col. (d).

Columns (b), (c), (d) and (e) will appear under the main caption reading "Fund at End of Year".

d. The following descriptions of classes and subclasses of investments will be set forth in column (a):

- Obligations of:
- Respondent—
 - Bonds.
 - Notes.
 - Affiliated companies—
 - Bonds.
 - Notes.
 - Nonaffiliated public utilities.
 - Governments.

- Others.
 - Total obligations.
- Preferred stocks of:
 - Respondent.
 - Affiliated companies.
 - Nonaffiliated public utilities.
 - Others.
 - Total preferred stocks.
- Common stocks of:
 - Respondent.
 - Affiliated companies.
 - Nonaffiliated public utilities.
 - Others.
 - Total common stocks.
- Other Investments (describe in note)
 - Total.
 - Cash not invested.
 - Accrued interest, and dividends receivable.
 - Total in fund.

It appearing that the proposed rule making proceeding in this matter has indicated the desirability of amendment of the schedule on investment of pension and benefit funds in Annual Report Forms M, O, and R;

It is ordered, That under authority contained in sections 4(i) and 219 of the Communications Act of 1934, as amended, Schedule 60D of Annual Report Form M for Class A and Class B Telephone Companies, Schedule 338d of Annual Report Form O for Wire-Telegraph and Ocean-Cable Carriers, and Schedule 338d of Annual Report Form R for Radiotelegraph Carriers are hereby amended, effective with the reports for calendar year 1959, as set forth in paragraph 8 hereof.

(Sec. 4, 48 Stat. 1066 as amended; 47 U.S.C. 154. Interprets or applies sec. 219, 48 Stat. 1077; 47 U.S.C. 219)

Adopted: December 16, 1959.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10942; Filed, Dec. 23, 1959; 8:49 a.m.]

[Docket No. 13081; FCC 59-1282]

PART 1—PRACTICE AND PROCEDURE
Compensation Paid to Individual Employees; Change in Reporting Requirements

In the matter of amendment of Annual Reports Form O, for Wire-telegraph and Ocean-cable Carriers; Form R, for Radiotelegraph Carriers; and Form M, for Class A and Class B Telephone Companies, to change the reporting requirements for compensation paid to individual employees; Amendment of Annual Report Form H for Holding Companies in the same matter; Docket No. 13081.

1. On July 29, 1959 the Commission adopted a Notice of Proposed Rule Making in the above-entitled matter, which was published in the FEDERAL REGISTER on August 5, 1959 (24 F.R. 6265), in

accordance with section 4(a) of the Administrative Procedure Act. This Notice presented for comment, on or before September 14, 1959 (with allowance for reply comments within twenty days thereafter), a proposal of The Western Union Telegraph Company to amend Annual Report Form O to require that the compensation of only those employees, other than officers, who receive \$20,000 or more a year be reported in Schedule 3, "General Officers and Executives." The Commission also proposed that any salary reporting requirement changes ordered in Annual Report Form O as a result of the proceeding would also be made in the appropriate schedules of Annual Report Forms M and R. The Commission further stated its intention of amending Instruction 1 of Schedule 3 of Forms O and R by striking the word "elected" therefrom to indicate that all officers are to be listed, whether they are elected by the stockholders or board of directors or are appointed by another officer.

2. Timely comments were received from the United States Independent Telephone Association (USITA), and from the American Telephone and Telegraph Company (AT&T), on behalf of itself and the Bell System Companies. The Communications Workers of America (CWA) filed a reply to the original comments of AT&T.

3. USITA, through its Accounting Committee, stated that it was in agreement with the proposal as suggested by the Commission. AT&T stated that the proposal was a step in the right direction, but indicated that the limit could be raised for employees other than officers to \$25,000 (or even \$30,000) without omitting salary information for top management employees of large telephone companies. AT&T further indicated that in their opinion the greatest importance of the larger limitation would be, in the interest of the employees concerned, to limit the publication of confidential salary information.

4. CWA in its reply comments stated that increases in the general price and wage levels did not warrant an adjustment such as that proposed by AT&T and that AT&T's proposal would result in a denial to the public of information to which it is entitled and which it must have to deal effectively and intelligently with regulated public utilities; that such enormous increases every few years, would make it virtually impossible to continue to gauge what is a very significant and important trend (not only to those within the industry but to the public generally) in employment from non-managerial to managerial classifications; and, that if any increase is deemed advisable by the Commission, they strongly feel that such an increase should, in no case, be more than the \$20,000 proposed in the Notice of Proposed Rule Making.

5. At the time that this schedule was included in the annual report forms in

1934, it appears that the Commission may have been influenced by the experience and recommendations of the Committee on Interstate and Foreign Commerce, House of Representatives, Seventy-Third Congress, which made an extensive study and report (Splawn Report) of the communications industry prior to the passing of the Communications Act of 1934. This committee solicited information from the carriers concerning all officers and those employees receiving \$10,000 or more in annual compensation. At that time \$10,000 seems to have embraced the salaries of most of the officers of average-sized carriers, and the Commission has continued the policy of requiring salary information concerning employees at approximately this same level.

6. A statistical study of a representative group of telephone and telegraph carriers reveals that a reporting requirement of \$20,000 would have made the number of employees reported in 1958 at least equivalent to the number reported originally in 1934 and, again in 1948, after the reporting requirement was changed from \$10,000 to \$15,000. The limits suggested by AT&T might be suitable for the larger Bell System Companies but would exclude many employees receiving salaries exceeding those of some officers in the smaller Bell Companies, independent telephone companies and carriers reporting on Forms O and R. The Commission believes that the \$20,000 figure will obtain data with respect to most employees at the top management level and will still afford considerable relief to the larger companies by reducing by more than one-half the number of employees for whom salaries must be reported.

7. No comments were received with respect to the proposal to delete the word "elected" from Instruction 1 of Schedule 3 of Forms O and R. We believe that this change should be made as proposed.

8. The Notice of Proposed Rule Making in this matter did not propose to amend schedule 462 in Annual Report Form H for holding companies which requires the reporting of similar salary data. (Holding companies that file their annual reports with this Commission on SEC Form 10K are also furnished copies of Schedule 462 to be filed with such reports.) This report form was not amended in 1948 when the limit in Annual Report Forms M, O and R was raised from \$10,000 to \$15,000. There appears to be no reason why the minimum salary to be reported by holding companies in schedule 462 of Form H should not also be increased to \$20,000 as a part of this proceeding.

It appearing that the proposed rule making proceeding in this matter has indicated the desirability of amendment of the Commission's Annual Report Forms M, O and R to specify \$20,000 as the minimum reporting level for employees other than officers, and further amendment of Forms O and R by de-

leting the word "elected" from instruction 1 of schedule 3; and

It further appearing that Schedule 462 of Annual Report Form H should also be amended to specify \$20,000 as the minimum reporting level for salaries of employees other than officers;

It is ordered, That under authority contained in sections 4(i) and 219 of the Communications Act of 1934, as amended, certain schedules in the annual report forms for 1959 and subsequent years are amended by deleting the amount shown in the first instruction of Schedule 3 of Forms O and R, Schedule 70B of Form M and Schedule 462 of Form H, and inserting in lieu thereof "\$20,000"; and also be deleting the word "elected" from the same instruction in Forms O and R.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 219, 48 Stat. 1077; 47 U.S.C. 219)

Adopted: December 16, 1959.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10943; Filed, Dec. 23, 1959;
8:49 a.m.]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

PART 4—OPERATION AND NAVIGATION OF PANAMA CANAL AND ADJACENT WATERS

EDITORIAL NOTE: The following sections of Part 4, having been rendered obsolete by operation of law, are hereby deleted from the Code of Federal Regulations: §§ 4.128, 4.129, 4.130, 4.131, 4.132, 4.134, 4.135.

Title 44—PUBLIC PROPERTY AND WORKS

Chapter I—General Services Administration

SUBCHAPTER D—MISCELLANEOUS REGULATIONS

PART 150—COVENANT AGAINST CONTINGENT FEES

Miscellaneous Amendments

The application of the covenant against contingent fees, and related procedures, to the procurement of personal property and nonpersonal services, including construction, is governed by the provisions of 41 CFR Subpart 1-1.5 (published in 24 F.R. 1941, March 17, 1959). Therefore it is necessary to amend this Part 150 to remove references therein

to the application of its provisions to the procurement of personal property and nonpersonal services, including construction.

Part 150 is amended in the following respects:

1. A cross reference is added, as follows:

CROSS REFERENCE: In connection with the application of the covenant against contingent fees, and related procedures, to the procurement of personal property and nonpersonal services, including construction, see 41 CFR Subpart 1-1.5.

2. Section 150.2(b) is revised to read as follows:

(b) The term "contract" means any contract for (1) the purchase by the Government of real property, (2) lease of real property for Government use, or (3) sale or lease of Government-owned real or personal property; and

3. Section 150.4(a) is revised to read as follows:

(a) In contracts for the purchase by the Government of real property. 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.

4. Section 150.4(c) is revised to read as follows:

(c) Adaptation for leases. The covenant as set forth in paragraph (a) of this section may be appropriately adapted for use in leases of real property for Government use. The covenant as set forth in paragraph (b) of this section may be appropriately adapted for use in leases of Government-owned real or personal property.

5. In § 150.6, the final paragraph in parentheses is revised to read as follows:

(The representation and agreement appearing on the face of Standard Form 114—Sale of Government Property, Invitation, Bid and Acceptance—August 1950 edition, pending revision of such form, shall be deleted and the above representation (and agreement) substituted therefor.)

6. Section 150.10 (c) and (d) are deleted.

FRANKLIN FLOETE,
Administrator.

DECEMBER 22, 1959.

[F.R. Doc. 59-11042; Filed, Dec. 23, 1959;
11:50 a.m.]

APPENDIX A—DELEGATIONS OF AUTHORITY
GENERAL DELEGATION OF AUTHORITY TO HEADS OF SERVICES, STAFF OFFICERS, AND REGIONAL COMMISSIONERS

Appendix A of this chapter is revised to read as follows:

Organization of General Services Administration

Paragraph

11. General authorities related to all organizational units.
12. Documents and instruments.
13. Security instruments.
14. Release and discharge of instruments.
15. Transfers of title.
18. Advertising.
19. Employment of experts.
32. Deputy Administrator.
34. Board of Review.
38. Director of Administration.
48. Comptroller.
57. General Counsel.
65. Commissioner, Defense Materials Service.
78. Commissioner, Federal Supply Service.
96. Archivist of the United States.
117. Commissioner, Public Buildings Service.
142. Commissioner, Transportation and Public Utilities Service.
156. Regional commissioners.

Organization of General Services Administration. The Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377; 40 U.S.C. 471), vests the functions of the General Services Administration in the head of the agency, the "Administrator of General Services". These functions are performed by the Administrator, or, subject to his direction and control, by such officers or divisions of the agency as he may designate.

There are two organizational levels within the agency: The Central Office and the "Regional Office". Within the Central Office there are the Office of the Administrator, five "Service" organizations and three Staff Offices. The Office of the Administrator consists of the Immediate Office of the Administrator, Office of the Deputy Administrator, the Office of the Special Assistant to the Administrator—Congressional and Public Affairs, and the Board of Review. The Service organizations are: Federal Supply Service, Public Buildings Service, Transportation and Public Utilities Service, Defense Materials Service, and National Archives and Records Service; the Staff Offices are: The Office of Administration, Office of General Counsel and Office of Comptroller. The Services are responsible for the direction and coordination of their programs in the ten regional offices. Staff Offices provide assistance and advice throughout the General Services Administration. On policy and major operational matters, the Services maintain direct communication with the "Regional Commissioners". On professional, technical and routine matters, they communicate directly with their counterpart "Regional Directors". The Regional Offices, headed by Commissioners, are completely inte-

grated and parallel the organizational pattern of the Central Office.

A more detailed description of the organizational structure of the General Services Administration may be found in the "United States Government Organization Manual" published annually as a special edition of the FEDERAL REGISTER, by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

Note: The numbering of the delegations of authority contained herein, including subparagraphs, is based upon the numbering of such delegations in the GSA Policy Manual, except for such paragraphs and subparagraphs as are reserved or do not have direct application to the public.

Extent of delegation. Pursuant to the authority vested in the Administrator of General Services by the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and other applicable statutes, Executive orders, regulations, and delegations, the following legal authority is hereby delegated to the designated officers and employees as set forth below.

The Administrator of General Services, as necessary, may direct that certain actions or categories of actions be submitted to him for review and approval prior to the exercise of the authority delegated herein.

11. General authorities related to all organizational units.

Any authority delegated to the Heads of Central Office Services and Staff Offices and Regional Commissioners shall be exercised in accordance with such applicable laws and regulations, and such administrative and program directives and instructions as are in effect on the date of the exercise of such authority. Within delegated authority, Heads of Central Office Services and Staff Offices and Regional Commissioners shall take any action incident to the exercise of such authority such as, but not limited to, those stated in paragraphs 12. through 19., below, except that the General Counsel and the Director of Administration, and their regional counterparts, are excluded from the authorities in paragraphs 12 through 15, below, and the General Counsel is also excluded from the authority in paragraph 18., below.

12. Documents and instruments.

They shall execute, acknowledge, and deliver appropriate written documents and instruments, including deeds, leases, permits, contracts, receipts, and bills of sale, in connection with the acquisition and disposal of real property, and the disposal of personal property.

13. Security instruments.

They shall accept any notes, bonds, mortgages, deeds of trust, or other security instruments taken in consideration, in whole or in part, in connection with the disposal of property.

14. Release and discharge of instruments.

They shall perform all acts necessary or proper to release and discharge any

security instrument or any lien created thereby or otherwise.

15. Transfers of title.

They shall perform any other acts necessary to effectuate the transfer of title to property.

18. Advertising.

They shall advertise, give public notice, or determine the manner of advertising, including the authority to publish advertisements or notices in newspapers.

19. Employment of experts.

They shall procure the temporary (not to exceed one year) or intermittent services of experts or consultants, or organizations thereof: *Provided*, That only the Commissioners, FSS, shall have the authority to procure stenographic reporting services.

32. Deputy Administrator.

b. Exercises all the authorities vested in the Administrator by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and other applicable statutes and executive orders, except as limited by sections 101(c), 106, 205(d), and 307(b) of the Act. This authority may not be redelegated.

34. Board of Review.

a. Acts as the representative of the Administrator in hearing, considering, and determining, as fully and finally as might the Administrator, appeals from decisions by contracting officers or other officials of GSA on disputed questions involving the award and administration of contracts, including contracts which contain provisions requiring the decision of appeals by the head of a department or his duly authorized representative or board, or where the Administrator of General Services has granted the right of appeal not otherwise authorized.

b. Performs such other review services as the Administrator may direct.

c. The Administrator of General Services, as necessary, may direct that this authority shall not be exercised in specific cases where he may desire or be required to render a decision on the matter in dispute, in which event the Board of Review shall make findings and recommendations to the Administrator with respect thereto.

d. In those cases where the consideration of the Comptroller General of the United States is desired or required before the final decision of the Board of Review is given, the request for the decision of the Comptroller General of the United States shall be by and with the approval of the Administrator of General Services.

e. The Board of Review shall have the power to adopt its own rules relating to the presentation and preparation of appeals, conduct of hearings, and issuances of opinions.

38. Director of Administration.

The Director of Administration, in carrying out his assigned program re-

sponsibilities, exercises authority, such as, but not limited to, the following:

c. Personal property management.

(3) Withdraws excess or surplus GSA personal property.

(6) Authorizes abandonment, destruction, or donation of GSA personal property to public bodies, and makes any determinations and findings incidental thereto.

(7) Takes possession of, utilizes, transfers, or disposes of, abandoned and unclaimed personal property and determines the fair value and costs of care and handling thereof.

d. Procurement and contracting. (1) Negotiates contracts without advertising for any service to be rendered by any university, college, or other educational institution.

(2) Makes purchases of office supplies, equipment, and nonpersonal services, not available from GSA stores stock, or through the use of supply and service contracts executed by FSS. The above authority shall include the use of imprest funds and Standard Form 44, Revised, U.S. Government Purchase Order-Invoice-Voucher.

43. Comptroller.

The Comptroller, in carrying out his assigned program responsibilities, exercises authority, such as, but not limited to, the following:

a. Audit. (1) Enters into contracts with recognized public accounting firms and certified public accountants for the performance by said firms or individuals of audits of GSA's agents and prime contractors and subcontractors.

(2) Audits the books and records of contractors doing business with GSA, or of any subcontractor engaged by such contractors.

c. Credit and Finance.

(2) Authorizes guarantees of loans under the Defense Production Act of 1950, as amended, and otherwise acts on behalf of GSA in connection with such loan guarantee program.

(4) Enters into contracts with any bank for the establishment of letters of credit to agents or suppliers of GSA, applies to such banks for the establishment of letters of credit under the terms of such contracts, and, when it is in the interest of the Government, amends and modifies such letters of credit and waives discrepancies in documents presented thereunder.

(5) Determines the financial responsibility of contractors, the financial terms and conditions of all forms of contracts, services the financial aspects of contracts, and authorizes advance payments on contracts under the First War Powers Act of 1941, as amended, and the Defense Production Act of 1950, as amended.

(6) Issues payment certificates and approves recommendations for issuance

of certificates of necessity under section 168 of the Internal Revenue Code of 1954.

(8) Approves certificates of essentiality in connection with loans made by the Treasury Department and Export-Import Bank of Washington under the Defense Production Act.

(10) Approves credit in connection with the disposal of surplus property and the establishment of credit terms and conditions.

(11) Administers and manages any credit, lease or permit, and any security therefor, and adjusts and settles any right of the Government with respect thereto, and collects all moneys due the Government on account thereof: *Provided*, That such authority shall not apply to any legal action to adjust, enforce, and settle any right of the Government with respect thereto.

57. General Counsel.

The General Counsel, in carrying out his assigned program responsibilities, exercises authority, such as, but not limited to, the following:

a. Agency representation. Represents executive agencies in proceedings involving carriers and other public utilities before Federal and State regulatory bodies, with respect to transportation and other public utility services for the use of such agencies.

b. Claims. (1) Considers, ascertains, determines, adjusts, and settles claims in connection with abandoned or unclaimed property and claims or adjustments, and enforcements, adjustments or settlements with respect to surplus property sales and credit.

(2) Considers, ascertains, determines, adjusts and settles any claim, demand, or request for adjustment in the nature of a claim, other than those described in subparagraph (1), above, arising out of or incident to any contract, agreement, lease, or permit executed pursuant to competent authority covering the procurement by purchase, construction, or otherwise, or disposal of personal property, real property, and services, and any claim under the Federal Tort Claims Act, and any claim in tort by GSA on behalf of the Government, but not so as to impair or affect authority otherwise vested in contracting officers to decide questions of fact under disputed clauses of contracts, or any responsibility vested in the Board of Review.

c. Certification. (1) Certifies true copies of delegations of authority by the Administrator and redelegations of authority by other GSA officials and provides such further certification as may be necessary to effectuate the intent of such delegations in form for recording in any jurisdiction, as may be required.

(2) Authenticates and attests copies of records created by GSA, furnishes authenticated copies of such records, and charges fees therefor.

(3) Determines whether the release of authenticated copies of any records in the custody of the Administrator is legal and not prejudicial to the national interest or security of the United States and furnishes properly authenticated

copies of such records in response to subpoenas duces tecum in appropriate cases.

d. Debarments. Executes and issues appropriate notices relating to debarments and proposed debarments of bidders.

f. Forfeitures. Applies for court order for delivery of property subject to forfeiture proceedings under section 304 of the Act of August 27, 1935 (40 U.S.C. 304i).

65. Commissioner, Defense Materials Service.

The Commissioner, DMS, in carrying out his assigned program responsibilities exercises authority, such as, but not limited to, the following:

b. Procurement, contracting, and disposal. (1) Procures and supplies personal property and nonpersonal services for the use of executive agencies and performs functions related to such procurement and supply; and, upon its request, provides these services to any Federal agency, mixed-ownership corporation, or the District of Columbia.

(2) The Commissioner, DMS, is designated as an agency head for the purposes of Title III of the Federal Property and Administrative Services Act of 1949, as amended.

(3) Negotiates purchases and contracts for property and services without advertising and makes any determinations and decisions required in connection therewith (41 U.S.C. 252(c)(1) through (15)). In connection with the negotiation of purchases or contracts which should not be publicly disclosed, section 302(c)(12), and purchases or contracts which are to be negotiated in order to assure standardization of equipment and interchangeability of parts, section 302(c)(13), the authority to make the determinations and decisions specified in sections 302(c)(12) and (13) is not redelegable. In connection with the negotiation of purchases or contracts for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test, section 302(c)(11), the authority to make the determinations or decisions specified in section 302(c)(11) is redelegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than \$25,000 (41 U.S.C. 252(c)).

(4) Makes purchases and contracts for property and services by advertising, and determines that the rejection of all bids is in the public interest.

(5) Determines the type of negotiated contract which will promote the best interests of the Government and makes the determinations required in connection with cost, cost-plus-a-fixed-fee, and incentive-type contracts.

(6) Makes advance, partial, progress, or other payments under contracts for property or services and makes the determinations and decisions required in connection therewith.

(7) Purchases strategic and critical materials.

(8) Disposes of any stockpile materials which are no longer needed because of revised determinations by the Office of Civil and Defense Mobilization and sells or otherwise disposes of materials released from the stockpile for use, sale, or other disposition for the purposes of common defense, or in time of war or during a national emergency.

(10) Accepts strategic or critical materials in lieu of cash in connection with the lease, sale, or other disposition of surplus property.

(11) Executes the following authorities of the Administrator under Section 303 of the Defense Production Act of 1950, as amended, in accordance with programs certified by the Director of the Office of Civil and Defense Mobilization.

(a) Purchases and makes commitments to purchase metals, minerals, and other materials for Government use or resale.

(b) Determines the quantities, terms, and conditions including advance payments, and periods of such purchases, commitments to purchase, and sales.

(c) Makes provision for subsidy payments, determines the amounts, manner, terms, and conditions thereof, and makes findings required in connection therewith.

(d) Encourages the exploration, development, and mining of strategic and critical metals and minerals, in accordance with policy directives issued by the Director of the Office of Civil and Defense Mobilization, in connection with foreign projects which were under the jurisdiction of the Administrator on November 12, 1954, and in carrying out any program certified to the Administrator by the Director of the Office of Civil and Defense Mobilization.

(13) Purchases or contracts for the purchase of materials for the supplemental stockpile, in accordance with programs certified by the Office of Civil and Defense Mobilization, pursuant to the Agricultural Trade Development and Assistance Act of 1954, as amended, Executive Order 10560, and Delegation of Authority from the Director of the Office of Civil and Defense Mobilization.

(14) Provides for the production and sale of Western Hemisphere abaca pursuant to the Abaca Production Act of 1950, and Executive Order 10539, as amended by Executive Order 10553; issues rules and regulations and makes determinations pursuant to said Act and Executive Orders; enters into contracts and acquires property for the purposes of said Act, and disposes of property held for the purposes of said Act when such property is no longer needed.

(15) Accepts offers and performs all necessary services, including the making of contracts, incident to the purchase, handling and storage of the ores and concentrates specified in the Domestic Tungsten, Asbestos, Fluorspar, and Columbiun-Tantalum Production and Purchase Act of 1956 and in accordance with the programs established for the administration of said Act, and holds and disposes of such ores and concentrates procured under the authority of said Act

in accordance with the provisions of said Act.

(17) Determines whether articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured are mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities and of a satisfactory quality, and determines, as a condition precedent to the purchase of materials of foreign origin for public use within the United States, that the price of like materials of domestic origin is unreasonable or that the purchase of like materials of domestic origin is inconsistent with the public interest, under the provisions of 41 U.S.C. 10a and Executive Order 10582, and makes the findings pursuant to 41 U.S.C. 10b.

(18) Enters into contracts or into amendments or modifications of contracts heretofore or hereafter made, and makes advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he determines that any such action would facilitate the national defense, subject to the limitations specified in Public Law 85-804.

c. *Qualitative maintenance.* (1) Provides for the refining or processing of stockpile materials and, when necessary to prevent deterioration, for the rotation of strategic and critical materials constituting a part of the stockpile.

(2) Processes and refines procured materials, executing the authority of the Administrator under section 303 of the Defense Production Act of 1950, as amended, in accordance with programs certified by the Director of the Office of Civil and Defense Mobilization.

d. *Storage and inspection.* (1) Provides for the storage, security and maintenance of strategic and critical materials for stockpiling purposes.

(2) Stores procured materials, executing the authority of the Administrator under section 303 of the Defense Production Act of 1950, as amended, in accordance with programs certified by the Director of the Office of Civil and Defense Mobilization.

(3) Exercises all functions to be performed by GSA pursuant to agreement between Commodity Credit Corporation and GSA relating to the inspection, handling, importation, storage, etc., of strategic materials acquired by CCC through barter of surplus agricultural commodities.

e. *Industrial equipment.* (1) Installs additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the United States Government, and installs Government-owned equipment in plants, factories, and other industrial facilities owned by private persons.

(2) Accepts the transfer of and provides for the handling, care, storage, protection, maintenance, utilization, repair, restoration, renovation, lending, leasing, and disposition of excess machine tools and industrial manufacturing

equipment, except such tools and equipment as are part of an industrial plant, as directed by the Secretary of Defense.

(3) Uses proceeds from insurance to repair or restore damaged National Industrial Reserve property, except industrial plants and related personal property.

f. *Nicarao project.* Negotiates, executes, administers, amends, and terminates any and all contracts, letters of intent, deeds, and other contractual instruments relating to the Nicaro nickel project, and takes such other action in connection therewith as may be necessary and lawful.

78. Commissioner, Federal Supply Service.

The Commissioner, FSS, in carrying out his assigned program responsibilities, exercises authority, such as, but not limited to, the following:

b. *Purchase and stores.* (1) Procures and supplies personal property and non-personal services for the use of executive agencies and performs functions related to such procurement and supply, such as contracting, inspection, storage, issue, property identification and classification, and repairing and converting; and, upon its request, provides these services to any Federal agency, mixed-ownership corporation, or the District of Columbia.

(4) Designates contractual services, other than personal and professional services, as nonpersonal services.

(5) Makes determinations as to the suitability of advance publicity, with due regard to the type of property involved and other relevant considerations, and makes determinations as to the practicability of giving such publicity for a period of at least fifteen days, in connection with contracts or purchases in excess of \$10,000 negotiated for medicines or medical property or property purchased for authorized resale.

(6) Negotiates purchases and contracts for property and services without advertising, and makes any determinations and decisions required in connection therewith. Section 302(c) (1) through (15), Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c) (1) through (15)). In connection with the negotiation of purchases or contracts which should not be publicly disclosed, section 302(c) (12), and purchases or contracts which are to be negotiated in order to assure standardization of equipment and interchangeability of parts, section 302(c) (13), the authority to make the determinations and decisions specified in sections 302(c) (12) and (13) is not redelegable. In connection with the negotiation of purchases or contracts for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test, section 302(c) (11), the authority to make the determinations or decisions specified in section 302(c) (11) is redelegable only to a chief officer responsible for procurement and only with respect to contracts

which will not require the expenditure of more than \$25,000 (41 U.S.C. 302(c)).

(7) Makes purchases and contracts for property and services by advertising and determines that the rejection of all bids is in the public interest.

(8) Determines the type of negotiated contract which will promote the best interests of the Government and makes the determinations required in connection with cost, cost-plus-a-fixed-fee, and incentive-type contracts.

(9) Determines that it would be in the public interest to make advance payments under contracts for property or services; makes advance, partial, progress or other payments under contracts for property or services; and inserts in bid solicitations for procurement of property or services provision limiting to small business concerns advance or progress payments.

(10) Makes determinations and places orders with any other department, establishment, bureau, or office for materials, supplies, equipment, work, or services, and makes agreements as to cost adjustments in connection therewith.

(13) Determines that a contract has a direct and immediate connection with the national defense pursuant to the Renegotiation Board Regulations. This Authority is not redelegable.

(14) Determines whether articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, and determines, as a condition precedent to the purchase of materials of foreign origin for public use within the United States, that the price of like materials of domestic origin is unreasonable, or that the purchase of like materials of domestic origin is inconsistent with the public interest, under the provisions of 41 U.S.C. 10a, and Executive Order 10582, dated December 17, 1954, and makes the findings pursuant to 41 U.S.C. 10b.

(15) Executes certificates required in support of drawback entries, pursuant to Customs Regulations, endorses export bills of lading, and executes certificates of exportation.

(18) Exchanges or sells similar items and applies the exchange allowance or proceeds of sale in whole or part payment for the property acquired.

c. *Quality control.* Exercises authority relating to conducting tests, making charges, and fixing fees therefor.

e. *Utilization and sales.* (1) Determines property surplus, disposes of surplus property, assumes custody and accountability of surplus property, and performs, or provides for the performance of, the care and handling of surplus property.

(2) Makes administrative determinations in connection with the disposal of surplus aircraft, aircraft components, and electronic property.

(5) Withdraws excess or surplus GSA property and approves or disapproves requests by holding agencies for the withdrawal of agency excess or surplus property.

(7) Authorizes abandonment, destruction, or donation of property to public bodies, and makes any determinations and findings incidental thereto.

(8) Directs agencies to delay or discontinue the disposal of any item of surplus property and determines that such action is in the interest of the Government.

(9) Prescribes and utilizes appropriate terms and conditions for disposals of surplus property by GSA and grants credit and takes security in connection with any disposal of surplus property authorized.

(10) Qualifies, retains, inactivates, and reinstates private auctioneers and auction service organizations for the sale of Government-owned surplus personal property: *Provided*, That such authority shall not include the authority to decide appeals to the Administrator against nonqualification or inactivation.

(11) Makes negotiated sales at fixed prices, either directly or through the use of disposal contractors, of such categories of surplus personal property as the Administrator determines.

(13) Donates surplus property for purposes of education, public health, or civil defense, or for research for any such purpose, and donates certain surplus property to the American National Red Cross.

(14) Disapproves, or notifies that GSA will interpose no objection to actions proposed to be taken by any agency to enforce compliance with terms and conditions contained in instruments by which transfers or donations of surplus property are made; reforms, corrects, or amends instruments; and grants releases from terms and conditions thereof.

(15) Administers and manages leases and permits where disposal has been by lease or permit: *Provided*, That such authority shall not include the authority to enforce, adjust, and settle any claim arising thereunder.

(16) Takes possession of, utilizes, transfers, or disposes of, abandoned and unclaimed property and determines the fair value and costs of care and handling thereof.

(17) Exercises authority of the Administrator covering the disposition of abandoned, forfeited, or seized property, under the Act of August 27, 1935, as amended (40 Stat. 879; 40 U.S.C. 304 f-m) and Sections 5862(b) and 5688(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5862(b), 5688(a)): *Provided*, That such authority shall not include the authority to require reports from other agencies, to make rules and regulations, and to apply for a court order.

(18) Exercises the following authorities of the Administrator as prescribed by the Office of Civil and Defense Mobilization Disaster Orders issued from time to time pursuant to Public Law 875, 81st Congress (64 Stat. 1109), as

amended, 42 U.S.C. 1855-1855g., and Executive Order 10427, dated January 16, 1953:

(a) Enters into and executes memoranda of understanding with duly authorized officials of any State within a major disaster area which has been designated by the President, and with duly authorized representatives of the Office of Civil and Defense Mobilization, to the end that GSA may appropriately assist in providing surplus supplies and equipment for the relief of small businesses whose places of business have been damaged or destroyed by major disaster.

(b) Carries out and fulfills all commitments properly made and obligations properly undertaken by GSA by virtue of such memoranda of understanding.

(19) Exercises the following functions assigned to the Administrator in any major disaster pursuant to Public Law 875, 81st Congress (64 Stat. 1109), as amended, 42 U.S.C. 1855-1855g., and Executive Order 10427, dated January 16, 1953:

(a) Utilizes, or lends to States and local governments GSA equipment, supplies, facilities, personnel, and other resources (other than the extension of credit).

(b) Distributes medicine, food, and other consumable supplies.

(c) Donates or lends surplus equipment and supplies to States for use or distribution by them.

(20) Performs civil defense responsibilities delegated by the Director of the Office of Civil and Defense Mobilization and cooperates with the Office of Civil and Defense Mobilization pursuant to the Federal Civil Defense Act of 1950, approved January 12, 1951, as amended (50 U.S.C. App. 2251-2297).

(21) Provides GSA personnel, materials, and facilities to the Director of the Office of Civil and Defense Mobilization, during the period of any civil defense emergency, for the aid of the States, and prepares civil emergency plans, in consultation with the Office of Civil and Defense Mobilization, pursuant to the Federal Civil Defense Act of 1950, as amended, and Executive Order 10346, dated April 18, 1952, as amended.

(22) Accepts or rejects on behalf of the United States any gift of tangible personal property made on condition that it be used for a particular defense purpose, and may convert into money, at the best terms available, any such gift of tangible personal property, or transfer to any other Federal agency without reimbursement such property as he may determine usable for the particular purpose for which it was donated (50 U.S.C. 1151, 1152).

f. *Motor Equipment.*

(4) Determines whether motor vehicle and related services will be furnished through the use, under rental or other arrangements, of motor vehicles of private fleet operators, taxicab companies, local or interstate common carriers, or Government-owned vehicles, or combinations thereof, and carries out the pro-

cedures established by the President for the taking effect of these determinations.

(6) Fixes prices payable by requisitioning agencies for motor vehicle and related services rendered.

(13) Executes certificates covering transfers of title to motor vehicles and motorcycles.

96. Archivist of the United States.

The Archivist of the United States, in carrying out his assigned program responsibilities, exercises authority, such as, but not limited to, the following:

a. General.

(2) Transfers, with the approval of the head of the originating agency (or his successor in functions, if any), records deposited (or approved for deposit) with the National Archives of the United States to public or educational institutions or associations.

(4) Imposes, relaxes, or removes restrictions on the use of records transferred to GSA, subject to prescribed limitations.

b. National Archives. (1) Makes and preserves appropriate motion picture films, still pictures, and sound recordings, pertaining to and illustrative of the United States Government and its activities; and releases for nonprofit educational purposes motion picture films, still pictures, and sound recordings in the National Archives.

(4) Furnishes authenticated or unauthenticated copies of materials deposited with the National Archives of the United States in a Federal Records Center, or a Presidential archival depository, the use of which is not restricted, and to charge fees therefor.

(5) Provides centralized microfilming service for Federal agencies.

(6) Exercises any authority vested in the Administrator relating to the execution of certified vouchers or the sale of publications under section 5 of the National Archives Trust Fund Board Act, approved July 9, 1941, as amended.

c. Presidential libraries. (1) Accepts for deposit and directs and effects the transfer of personal papers and other historical materials of any President or former President of the United States, or any other official or former official of the Government, and other papers relating to and contemporary with any President or former President of the United States; and documents, including motion picture films, still pictures, and sound recordings that are appropriate for preservation by the United States Government.

(2) Maintains, operates, and protects Presidential archival depositories; charges and collects reasonable fees for the privilege of visiting and viewing any exhibit room or museum space in any Presidential archival depository; accepts bequests of money or other property, and expends, under the provisions of section 5 of the Act of July 9, 1941, as amended, funds paid into National Ar-

chives Trust Fund, for the benefit of the Presidential archival depository in connection with which they were received, including administrative and custodial expenses.

d. Records management.

(3) Establishes, maintains, and operates records centers.

(4) Exercises, in accordance with the provisions of the Records Disposal Act, approved July 7, 1943, as amended, the authority to submit to the Congress lists or schedules proposing the disposal of Federal records, and notifies the agency concerned of the action taken thereon by the Congress; the authority to empower the head of an agency to dispose of records; the authority with respect to the disposal of records constituting a continuing menace to human life, health, or property.

e. Federal Register. (1) Exercises, in accordance with the provisions of the Federal Register Act, as amended, and the regulations of the Administrative Committee of the Federal Register, any authority of the Administrator relating to the custody, filing for public inspection, and publication of documents in the FEDERAL REGISTER, and publication of the U.S. Government Organization Manual and the Code of Federal Regulations.

(2) Exercises any authority of the Administrator relating to the receipt, custody, and publication of the Acts of Congress.

(3) Exercises any authority of the Administrator relating to publication, certification, and adoption of amendments to the Constitution of the United States.

(4) Exercises, in accordance with the provisions of the Act of June 25, 1948, as amended, any authority of the Administrator relating to the receipt, custody, filing for public inspection, and verification of the Presidential electoral vote of the several States, and any authority of the Administrator relating to receipt, custody, and filing for public inspection of credentials of electors of President or Vice President.

f. Procurement and contracting. (1) Negotiates purchases and contracts for property and services without advertising, and makes any determinations and decisions required in connection therewith.

(2) Determines the type of negotiated contract which will promote the best interests of the Government.

(3) Makes the determinations required in connection with cost, cost-plus-a-fixed-fee, and incentive-type contracts.

117. Commissioner, Public Buildings, Service.

The Commissioner, PBS, in carrying out his assigned program responsibilities exercises authority, such as, but not limited to, the following:

b. Acquisition, utilization, and disposal.

(3) Determines property surplus, assumes custody and accountability of surplus property, prescribes and utilizes appropriate terms and conditions for

disposals of surplus property by GSA, and disposes of surplus property.

(4) Withdraws excess or surplus GSA property and approves or disapproves requests by holding agencies for the withdrawal of agency excess or surplus property.

(5) Directs agencies to delay or discontinue the disposal of any item of surplus property and determines that such action is in the interest of the Government.

(6) Grants interim rights for use and occupancy of surplus property and disapproves or notifies that no objection will be interposed to holding agencies granting such rights.

(7) Grants credit and takes security in connection with any disposal authorized.

(8) Disapproves, or notifies that GSA will interpose no objection to actions proposed to be taken by any agency to enforce compliance, to reform, to correct, or to amend instruments, and to grant releases from terms and conditions thereof.

(9) Authorizes abandonment, destruction, or donation of property to public bodies, and makes any determinations and findings incidental thereto.

(11) Obligates amounts from the proceeds of disposition of surplus property and related personal property within limitations set by the Director of the Bureau of the Budget, pays expenses incurred for dispositions of surplus real and related personal property for fees of appraisers, auctioneers, and realty brokers, and for advertising and surveying.

(14) Enters into leases of Federal building sites and additions to sites, including improvements thereon, and specifies the terms and conditions deemed necessary in the public interest.

(15) Determines leased space to be surplus and disposes of such space by sublease, to defray costs necessary to provide services to the Government's lessee and pay the rent not otherwise provided for on the lease of the space to the Government.

(16) Acquires by purchase, condemnation, or otherwise, real property or interests therein, and acquires sites in accordance with applicable law, including the acceptance of donations.

(17) Authorizes the closing and vacating of streets and alleys in the District of Columbia, and transfers portions of Federal building sites for street widening purposes.

(18) Performs the functions required under 23 U.S.C. 107 and 317 relating to GSA property and excess and surplus property determined to be necessary for highway purposes.

(19) Acquires space for GSA and other agencies by lease, assigns and re-assigns space therein, and obtains, when appropriate, reimbursement therefor.

(20) Authorizes deviations in U.S. Standard Form No. 2 (Revised).

(21) Accepts the transfer of, and utilizes, leases, transfers, or disposes of industrial plants and related personal property in the National Industrial Re-

serve as authorized or directed by the Secretary of Defense.

(22) Makes determinations as to availability of and transfers property for wildlife conservation purposes under Public Law 537, 80th Congress, approved May 19, 1948, and makes and has published in the FEDERAL REGISTER an appropriate order whenever any such transfer is made.

(23) Performs the functions vested in the Administrator by Public Law 537, 83d Congress, approved July 27, 1954, as they pertain to acceptance of conditional gifts of real property and related personal property for defense purposes.

(24) Transfers property pursuant to section 16 of the Federal Airport Act, and makes determinations incident thereto.

(25) Approves payment of sums in lieu of taxes.

c. Management and operation. (1) Takes possession of, utilizes, transfers, or disposes of, abandoned and unclaimed property and determines the fair value and the costs of care and handling thereof.

(2) Performs care and handling of excess GSA property pending disposition, and performs, or provides for the performance of, the care and handling of surplus property.

(3) Repairs, alters, and improves rented premises without regard to the 25 percent limitation of section 322 of the Act of June 30, 1932, and makes the determination required in connection therewith. This authority is not redelegable.

(5) Approves payment of rent and makes repairs, alterations, and improvements under any lease entered into by or transferred to GSA for housing any Federal agency exempted by law as of June 30, 1950, from the 25 percent limitation of the Act of June 30, 1932.

(6) Obtains payments through advances or otherwise, for services, space, quarters, maintenance, repair, or other facilities furnished on a reimbursable basis to any other Federal agency, or any mixed-ownership corporation, or the District of Columbia.

(8) Approves payment of ground rent for buildings owned by the United States or occupied by Federal agencies, and approves payment of such rent in advance when required by law or determines such to be in the public interest.

(9) Makes the determinations required by section 210(g) of the Federal Property and Administrative Services Act of 1949, as amended, in connection with the moving or supplying of furniture and furnishings to agencies moving between GSA-controlled locations.

(10) Issues permits and licenses, revocable at will, for the use of GSA lands and buildings, and makes the determination that the Government's interest will be subserved thereby.

(12) Exercises authority in connection with the operation, maintenance, repair, improvement, and protection of Government-owned and rented buildings.

(17) Makes changes in, maintains, and repairs the New York pneumatic tube system.

(18) Furnishes utilities and other services to occupants or users of National Industrial Reserve plants and surplus property installations.

(21) Appoints uniform guards as special policemen; prescribes rules and regulations governing GSA buildings and grounds; details special police on request of other agencies; utilizes facilities and services of existing Federal law enforcement agencies, and those of State and local law enforcement agencies.

(24) Procures and supplies personal property and nonpersonal services for the use of executive agencies and performs functions related to such procurement and supply and, upon its request, provides these services to any Federal agency, mixed-ownership corporation, or the District of Columbia.

(26) Exercises the authority of the Administrator in any major disaster pursuant to Public Law 875, 81st Congress (64 Stat. 1109), as amended, 42 U.S.C. 1855-1855g, and Executive Order 10427, dated January 16, 1953, to perform protective and other work on public or private lands essential for the preservation of life and property, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of local governments damaged or destroyed.

(27) Enters into reciprocal agreements with any fire organization for mutual aid in furnishing fire protection to GSA properties; makes the determination required by 42 U.S.C. 1856b, and renders emergency assistance in extinguishing fires and in preserving life and property from fire.

d. Construction services. (1) Prepares and approves plans, drawings, designs, specifications, and estimates and enters into professional service contracts incidental thereto.

(2) Constructs, extends, remodels, alters, repairs, preserves, improves and renovates buildings, and administers and supervises the performance of such work.

(3) At the request of any Federal agency, mixed-ownership corporation, or the District of Columbia, acquires lands for buildings and projects authorized by Congress, makes surveys and test borings, prepares plans and specifications, and contracts for and supervises the construction and development, and the equipping of such buildings or projects, and determines sums necessary to be transferred to GSA by such agency in advance for such purposes.

(5) Exercises the authority contained in Public Law 648, 79th Congress (60 Stat. 896), approved August 7, 1946, as amended by Public Law 221, 82d Congress (65 Stat. 657), approved October 25, 1951, with respect to the District of Columbia hospital program, to acquire land, construct buildings, make grants to private agencies, and take any and all other and further action in exercise of the powers and in discharge of the duties assigned

to the Administrator of General Services pursuant to the aforesaid Public Law 648, as amended, and as modified by the Federal Property and Administrative Services Act of 1949, as amended.

e. Procurement and contracting. (1) Pursuant to section 309(a) (41 U.S.C. 259(a)), the Commissioner, Public Buildings Service, is designated as an "agency head" for the purposes of Title III, except for the making of delegations or determinations specified in section 302(a) (41 U.S.C. 252(a)).

(2) Negotiates purchases and contracts for property and services without advertising and makes any determinations and decisions required in connection therewith. Section 302(c) (1) through (15) (41 U.S.C. 252(c) (1) through (15)). In connection with contracts or purchases in excess of \$10,000 negotiated for medicines or medical property, section 302(c) (7), or property purchased for authorized resale, section 302(c) (8), to make determinations and give the publicity required by section 302(b) (41 U.S.C. 252(b)). In connection with the negotiation of purchases or contracts which should not be publicly disclosed, section 302(c) (12), and purchases or contracts which are to be negotiated in order to assure standardization of equipment and interchangeability of parts, section 302(c) (13), the authority to make the determinations and decisions specified in sections 302(c) (12) and (13) is not redelegable. In connection with the negotiation of purchases or contracts for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test, section 302(c) (11), the authority to make the determinations or decisions specified in section 302(c) (11) is redelegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than \$25,000 (41 U.S.C. 252(c)).

(3) Makes purchases and contracts for property and services by advertising, and determines that the rejection of all bids is in the public interest.

(4) Exercises authority relating to conducting tests, making charges, and fixing fees therefor.

(5) Determines the type of negotiated contract which will promote the best interests of the Government and makes the determinations required in connection with cost, cost-plus-a-fixed fee, and incentive-type contracts.

(6) Approves advance payments and makes the determinations and decisions required in connection therewith. This authority is not redelegable.

(7) Determines whether articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, and determines, as a condition precedent to the purchase of materials of foreign origin for public use within the United States, that the price of like materials of domestic origin is unreasonable, or that the purchase of like materials of domestic origin is inconsistent with the public

interest, under the provisions of 41 U.S.C. 10a and Executive Order 10582, dated December 17, 1954, and makes the findings pursuant to 41 U.S.C. 10b.

(8) Makes the determinations, enters into purchase contracts and other agreements, and exercises the other powers and authorities granted in Sections 411 and 412 of the Public Buildings Act of 1949, as amended, added by the Public Buildings Purchase Contract Act of 1954, and by the Act approved July 12, 1955.

(9) Pursuant to Title II of the First War Powers Act of 1941, as amended, enters into contracts and into amendments or modifications of contracts heretofore or hereafter made, and approves advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, including authority to modify or amend or settle, by agreement, claims under contracts heretofore or hereafter made; approves advance, progress, and other payments upon such contracts and enters into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds, and determines that any such action would facilitate the national defense.

(10) Determines that a contract has a direct and immediate connection with the national defense pursuant to the Renegotiation Board Regulations. This authority is not redelegable.

142. Commissioner, Transportation and Public Utilities Service.

The Commissioner, TPUS, in carrying out his assigned program responsibilities exercises authority, such as, but not limited to, the following:

a. *Procurement and contracting.* (1) Procures and supplies personal property and nonpersonal services, in connection with transportation or related services, for the use of executive agencies (including GSA) and performs functions related to such procurement and supply; and, upon its request, provides these services to any Federal agency, mixed-ownership corporation, or the District of Columbia.

(2) The Commissioner, TPUS, is designated as an agency head for the purposes of Title III of the Federal Property and Administrative Services Act of 1949, as amended, and, except for the making of delegations or determinations specified in section 302(a) (41 U.S.C. 252(a)), the Commissioner may exercise the following authority provided in Title III:

(a) Negotiates purchases and contracts for property and services without advertising, and makes any determinations and decisions required in connection therewith (41 U.S.C. 252(c) (1) through (6), (10), (12), (14), and (15)). In connection with the negotiation of purchases and contracts which should not be publicly disclosed (41 U.S.C. 252(c) (11)), the authority to make the determinations and decisions specified in this section is not redelegable.

(b) Makes purchases and contracts for property and services by advertising, and determines that the rejection of all bids is in the public interest.

(c) Determines the type of negotiated contract which will promote the best interests of the Government and makes the determinations required in connection with cost, cost-plus-a-fixed-fee, and incentive type contracts.

(3) Negotiates and executes all contracts for transportation of related services arising under:

(a) The Strategic and Critical Materials Stock Piling Act or the Defense Production Act of 1950, as amended.

(b) The supplemental stockpile, pursuant to the Agricultural Trade Development and Assistance Act of 1954, as amended, Executive Order 10560, and Delegation of Authority from the Director of the Office of Civil and Defense Mobilization, dated November 17, 1954.

(c) The Abaca Production Act of 1950, and Executive Order 10539, as amended by Executive Order 10553.

(d) The Domestic Tungsten, Asbestos, Fluorspar, and Columbium-Tantalum Production and Purchase Act of 1956, and delegation of authority issued pursuant thereto by the Secretary of the Interior, dated July 31, 1956.

(e) The agreement between Commodity Credit Corporation and GSA relating to services to be furnished by GSA with respect to strategic materials acquired by Commodity Credit Corporation through barter of surplus agricultural commodities.

* * * * *
c. *Agency Representation.* Represents executive agencies (including GSA) in negotiations with carriers and other public utilities involving transportation and other public utilities services for use of such agencies.

156. Regional Commissioners.

The Regional Commissioner, in carrying out his assigned program responsibilities, exercises authority, such as, but not limited to, the following:

a. *Financial management.* (1) Approves credit in connection with the disposal of surplus property and the establishment of credit terms and conditions.

(3) Administers and manages any credit, lease, or permit, and any security therefor, and collects all moneys due the Government on account thereof: *Provided*, That such authority shall not apply to any legal action to adjust, enforce, and settle any right of the Government with respect thereto.

* * * * *
c. *Legal activities.* (1) Considers, ascertains, determines, adjusts, and settles the following claims:

(a) Any claim, demand, or request for adjustment in the nature of a claim, other than those described in (c) below, arising out of or incident to any contract, agreement, lease, or permit executed pursuant to competent authority covering the procurement by purchase, construction, or otherwise, or disposal of personal property, real property and services;

(b) Any claim under the Federal Tort Claims Act, and any claim in tort by GSA on behalf of the Government; and

(c) Any claim in connection with abandoned or unclaimed property and

claims or adjustments, and enforcements, adjustments, or settlements with respect to surplus property sales and credit;

Provided, however, That this authority shall not impair or affect authority otherwise vested in contracting officers to decide questions of fact under disputed clauses of contracts, or any responsibility vested in the Board of Review.

(2) Applies for a court order for delivery of property subject to forfeiture proceedings under section 304 of the Act of August 27, 1935. This authority may be redelegated to the Regional Counsel only.

(3) Certifies true copies of delegations of authority by the Administrator and redelegations by other GSA officials, and provides such further certifications as may be necessary to effectuate the intent of such delegations and redelegations in form for recording in any jurisdiction, as may be required.

(4) Authenticates and attests copies of records created by GSA, furnishes authenticated copies of such records, and charges fees therefor.

(5) Determines whether the release of authenticated copies of any records in the custody of the Administrator is legal and not prejudicial to the national interest or security of the United States and furnishes properly authenticated copies of such records in response to subpoenas duces tecum in appropriate cases.

d. *Property management.*

* * * * *
(3) Withdraws excess or surplus GSA personal property.

(4) Authorizes abandonment, destruction, or donation of GSA personal property to public bodies, and makes any determinations and findings incidental thereto.

(5) Takes possession of, utilizes, transfers, or disposes of, abandoned and unclaimed personal property, and determines the fair value and costs of care and handling thereof.

e. *Procurement and contracting.* (1) Makes purchases of office supplies, equipment, and nonpersonal services, not available from GSA stores stock, or through the use of supply and service contracts executed by FSS. The above authority shall include the use of imprest funds and Standard Form 44, Revised, U.S. Government Purchase Order-Invoice-Voucher.

(2) Negotiates contracts, without advertising, for any service to be rendered by any university, college, or other educational institution.

f. *Agency representation.* Represents executive agencies in proceedings involving carriers and other public utilities before Federal and State regulatory bodies, with respect to transportation and other public utility services for the use of such agencies.

g. *Printing.* Makes the certification as to the use of illustrations in GSA field printing prescribed by the Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States: *Provided*, that the additional cost of the

illustrations in such printing in any case shall not exceed \$500. This authority may not be redelegated.

Dated: December 22, 1959.

FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 59-11043; Filed, Dec. 23, 1959;
11:50 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2036]

NEW MEXICO

Partially Revoking Executive Orders No. 6143 of May 23, 1933, and No. 6276 of September 8, 1933

By virtue of the authority vested in the President by section 1 of the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Executive Orders No. 6143 of May 23, 1933, and No. 6276 of September 8, 1933, which withdrew public lands in New Mexico to aid the State in making exchange selections as provided by the Act of June 15, 1926 (44 Stat. 746-748), are hereby revoked so far as they affect the following-described lands:

NEW MEXICO PRINCIPAL MERIDIAN
[1492175]

T. 21 S., R. 18 W.,

Sec. 24, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, and
E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

[1500537]

T. 16 S., R. 19 W.,

Sec. 7, lot 3 and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 16 S., R. 20 W.,

Sec. 12, SE $\frac{1}{4}$.

The areas described aggregate 511.72 acres.

2. The lands in T. 21 S., R. 18 W., are located in Hidalgo County, seven miles northeast of Lordsburg, New Mexico. The topography is moderately rolling and undulating. The soils are deep sandy loams and sandy clay loams. Vegetation consists chiefly of tobosa and grama grasses and yucca. The lands in T. 16 S., Rs. 19 and 20 W., are located on the southern slopes of Applegate Mountain, approximately 15 miles west of Cliff, New Mexico. Topography is generally very rough and mountainous, with deeply entrenched sharp valleys between the ridges which form the southern slopes of Applegate Mountain. Soil coverage is very scant.

3. No applications for the lands will be allowed under the homestead, desert land, small tract, or any other nonmineral public land law, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. The State of New Mexico has waived the preference right of application granted it by subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852).

5. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections and locations under the public land laws in accordance with the following:

a. Applications and selections under the nonmineral public land laws may

be presented to the Manager named below, beginning on the date of this order. Such applications, selections and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing law, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 23, 1960, will be considered as simultaneously filed at that hour. Rights under such applications and selections and offers filed after that hour will be governed by the time of filing.

6. The lands have been open to applications and offers under the mineral leasing laws and to location for metaliferous minerals. They will be open to location for nonmetaliferous minerals beginning at 10:00 a.m. on January 23, 1960, provided, however, that a classification of the lands or any of them for disposal under the Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869), as amended, will segregate the lands as provided by the Act and the regulations in 43 CFR 254.6.

7. Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Santa Fe, New Mexico.

ROGER ERNST,

Assistant Secretary of the Interior.

DECEMBER 18, 1959.

[F.R. Doc. 59-10971; Filed, Dec. 23, 1959;
8:50 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[7 CFR Part 301]

SOYBEAN CYST NEMATODE

Notice of Public Hearing on Extending Quarantine to State of Illinois

The Administrator of the Agricultural Research Service has information that the soybean cyst nematode (*Heterodera glycines* Ichinohe), which causes a dangerous disease of soybeans and certain other plants, and which has not heretofore been widely prevalent or distributed within or throughout the United States, but which previously has been found to exist in certain parts of the States of Arkansas, Kentucky, Mississippi, Missouri, North Carolina, Tennessee, and Virginia, has recently been

discovered in certain parts of the State of Illinois.

Notice is hereby given that it is proposed under the authority of section 8 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 150ee), to quarantine the State of Illinois and to prohibit or restrict the movement from Illinois into or through any other State, Territory, or District of the United States of (a) soil, separately or with other things; (b) nursery stock and other plants with roots attached; (c) true bulbs, corms, rhizomes, and tubers; (d) root crops; (e) soybeans; (f) small grains; (g) ear corn; (h) hay, straw, fodder and plant litter of any kind; (i) seed cotton; (j) used farm tools, implements, and harvesting machinery; (k) used construction and maintenance equipment; (l) used crates, boxes, bur-lap bags, and cotton picking sacks, and

other used farm products containers; and (m) other farm products and farm equipment, processing machinery, trucks, wagons, railway cars, aircraft, boats, and other means of conveyance, and unlimited by the foregoing, any other products and articles of any character whatsoever, not covered by (a) through (l) above, when it is determined in accordance with regulations supplemental to 7 CFR 301.79 that they present a hazard of spread of soybean cyst nematodes.

The State of Illinois has already imposed an intrastate quarantine on the movement of the above-designated articles from localized areas actually infested by the soybean cyst nematode. It is therefore proposed to limit the federally regulated localities to these same areas.

A public hearing will be held before a representative of the Agricultural Research Service in the Auditorium, Illinois

Building, State Fair Grounds, Springfield, Illinois, at 10 a.m., January 26, 1960 at which hearing any interested person may appear and be heard, either in person or by attorney, on the proposals. Any interested person who desires to submit written data, views, or arguments on the proposals may do so by filing the same with the Director of the Plant Pest Control Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C., on or before January 26, 1960, or with the presiding officer at the hearing.

Further, notice is hereby given under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that if it is determined, after hearing, that the State of Illinois should be quarantined as proposed, the Administrator of the Agricultural Research Service is considering amending 7 CFR 301.79 by adding the State of Illinois to the States designated therein as quarantined.

All persons who desire to submit written data, views, or arguments in connection with the proposed quarantine amendment should file the same with the Director of the Plant Pest Control Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C., on or before January 26, 1960, or with the presiding officer at the hearing provided for above.

(Sec. 9, 37 Stat. 318, sec. 106, 71 Stat. 33; 7 U.S.C. 162, 150ee. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U.S.C. 161, 19 F.R. 74, as amended)

Done at Washington, D.C., this 22d day of December 1959.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 59-10981; Filed, Dec. 23, 1959; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 190, 194]

[Ex Parte No. MC-40]

QUALIFICATIONS AND MAXIMUM HOURS OF SERVICE OF EMPLOYEES OF MOTOR CARRIERS AND SAFETY OF OPERATION AND EQUIPMENT

Notice of Proposed Rule Making

DECEMBER 7, 1959.

Notice is hereby given, pursuant to section 4(a) of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1003), that the Interstate Commerce Commission under authority contained in sections 204(a), 220 (a), (d), and (e), and 222(g) of the Interstate Commerce Act (49 Stat. 546, 563, 564, as amended; 49 U.S.C. 304, 320, 322) proposes to amend § 190.33 *Applicability of regulations of the Motor Carrier Safety Regulations* prescribed by order of April 14, 1952, as amended (49 CFR 190.33) as set out below, to change the title of Part 194 of said regulations from "Reporting of Ac-

cidents" to "Recording and Reporting of Accidents" (49 CFR 194), and to vacate and set aside § 194.2 *Reportable accidents*, § 194.3 *Reports of accidents involving passenger-carrying vehicles*, § 194.4 *Reports of accidents involving property-carrying vehicles*, § 194.5 *Filing of accident reports*, § 194.6 *Retention of accident reports*, § 194.7 *Immediate notice of fatal accidents*, § 194.8 *Deaths occurring before filing report*, and § 194.9 *Notice of death after filing*

report of said regulations (49 CFR 194.2-194.9) and substitute in lieu thereof §§ 194.2 to 194.8, inclusive, as set out below:

§ 190.33 Applicability of regulations.

Parts 190-197 of this subchapter shall be applicable to common carriers, contract carriers, and private carriers subject to Part II, Interstate Commerce Act (49 U.S.C. 301 et seq.), as shown in the following table:

	Applicable parts of regulations						
	191	192	193	194	195	196	197
A. Vehicles and drivers used wholly within a municipality or the commercial zone thereof as defined by the Commission:							
1. When transporting explosives or other dangerous articles of such type and in such quantity as to require the vehicle to be specially marked or placarded under the Explosives and other Dangerous Articles Regulations, 49 CFR 77.823, or when operating without cargo under conditions which require the vehicle to be so marked or placarded under the cited regulations.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. When operating under such conditions that special marking or placarding is not required under the regulations cited in paragraph A1 of this table.	No	No	No	Yes	Yes	No	No
B. Vehicles and drivers used beyond a municipality or the commercial zone thereof as defined by the Commission:							
1. When transporting explosives or other dangerous articles.....	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. When not transporting explosives or other dangerous articles....	Yes	Yes	Yes	Yes	Yes	Yes	No

NOTE: The operations outlined in A and B above include the transportation and use of certain vehicles as specifically described in section 203(b) of the act, which include, generally, the following: (1) School buses; (2) taxicabs; (3) hotel buses; (4) motor vehicles under control of the Secretary of the Interior; (5) motor vehicles of agricultural cooperative associations; (6) motor vehicles used exclusively in carrying ordinary livestock, fish, or agricultural commodities; (7) motor vehicles used exclusively in distribution of newspapers; (7a) transportation incidental to transportation by aircraft; (8) transportation wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of such municipality or municipalities; (9) the casual, occasional, or reciprocal transportation of passengers (when arranged for by brokers or other persons for compensation) and of property consisting of explosives or other dangerous articles by motor vehicle, except that Part 195 is applicable to all casual, occasional, or reciprocal transportation by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.

The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise. (Sec. 203(a)(17) of the act.) Except as otherwise specifically provided, motor vehicles controlled and operated by any farmer when used in the transportation of agricultural commodities and products thereof from his farm, or in the transportation of supplies to his farm, are subject to the same regulations as those applicable to private carriers of property.

(Sec. 204(a), 49 Stat. 546, as amended; 49 U.S.C. 304)

AUTHORITY: §§ 194.2 to 194.9 issued under section 204(a), 49 Stat. 546, as amended; 49 U.S.C. 304; §§ 194.3 to 194.9 also issued under section 220 (a), (d), and (e) and 222(g), 49 Stat. 563, 564, as amended; 49 U.S.C. 320, 322.

§ 194.2 Definitions.

As used in this part, the following words or terms shall be construed to mean:

(a) *Accident*. Any occurrence in interstate, foreign, or intrastate commerce which in any manner involves a motor vehicle, whether loaded or empty, and from which there results an injury to or death of any person, or property damage of any kind. Such occurrences shall include:

(1) Any collision in which a motor vehicle, vehicle part or accessory, or cargo, strikes or is struck by another vehicle;

(2) Any collision in which a motor vehicle, vehicle part or accessory, or cargo, strikes or is struck by any person or animal;

(3) Any collision in which a motor vehicle, vehicle part or accessory, or cargo, strikes or is struck by any inanimate object;

(4) Any non-collision occurrence involving an overturn or running off the highway of a motor vehicle;

(5) Any non-collision occurrence involving a runaway motor vehicle or vehicle separation;

(6) Any non-collision occurrence involving a fire or explosion in or on a motor vehicle;

(7) Any non-collision occurrence involving shifting cargo of a motor vehicle;

(8) Any injury to or death of any person or property damage resulting from escape of an injurious or contaminating liquid, solid, gas, or radiation included in the cargo or contents of a motor vehicle;

(9) Any injury to or death of any person resulting from loading, unloading, or the moving or securing of cargo on a motor vehicle;

(10) Any injury to or death of any person resulting from boarding, alighting, or riding within any motor vehicle; and

(11) Any violent seizure or attack suffered by a driver of a motor vehicle.

which the motor carrier has his or its principal place of business.

(e) *Retention of copies of accident reports.* A copy of each accident report filed in compliance with this Section shall be retained by the motor carrier in the files of his or its principal place of business for at least 3 years; *Provided, however,* That a copy of an identical report of such accident filed with any State public utilities or railroad commission or other State agency or insurance company requiring the reporting of accidents on forms identical with Form BMC-50-B and Form BMC-50-T will satisfy this requirement if such a copy carries a notation on its face that report of the accident has been made to this Commission.

§ 194.6 Immediate notice of fatal accidents.

Whenever a reportable accident results in the death of any person at the time of the accident or within 24 hours thereafter, the motor carrier, whether domiciled in the United States or elsewhere, shall immediately transmit notice of such death by telegraph or telephone to the proper District Director as indicated in § 194.5(d). Such notice shall include the following information:

The date, time, and exact location of the accident, the number of persons killed and the number injured, and the name and address of the motor carrier.

§ 194.7 Deaths occurring before filing report.

In addition to the requirements of § 194.6, all deaths shall be reported on Form BMC-50-B or Form BMC-50-T whether they occur at the time of the accident or subsequently if such deaths occur prior to the filing of said accident report form.

§ 194.8 Notice of death after filing report.

Whenever any accident results in the death of any person after the motor carrier has filed his report of the accident on Form BMC-50-B or Form BMC-50-T, notice of such death shall be given in writing, as soon as possible after such death becomes known to the motor carrier, to the proper District Director as indicated in § 194.5(d). Such notice shall include the following information: The date and location of the accident, the name and age of the deceased, and the name and address of the motor carrier.

Prior to final adoption of such regulations, consideration will be given to any written statements containing data, views, or arguments concerning the subject matter hereof which are submitted on or before April 1, 1960. No oral hearing is contemplated and any request for oral hearing shall be supported by an explanation as to why the evidence to be presented cannot reasonably be submitted in written form. One original signed copy and 14 additional copies of such written statements containing data, views, or arguments shall be submitted in accordance with the Commission's general rules of practice.

Notice of this proceeding shall be given to motor carriers, other persons of interest, and to the general public by depositing a copy of this notice in the office of the Secretary of the Interstate Commerce Commission, Washington, D.C., and by filling a copy with the Director, Office of the Federal Register.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 59-10977; Filed, Dec. 23, 1959; 8:50 a.m.]

NOTICES

DEPARTMENT OF DEFENSE

Department of the Army

BRIDGE OF THE GODS, COLUMBIA RIVER, NEAR CASCADE LOCKS, OREGON

Approval of Bridge Tolls

The Secretary of the Army, pursuant to the authority conferred upon him by section 4 of the General Bridge Act, approved March 23, 1906 (33 U.S.C. 494) is considering the following schedule of tolls to supersede all previous schedules, as the legal rates which shall be demanded and received for the transit of the following classes of traffic over the bridge, commonly called Bridge of the Gods, across the Columbia River near Cascade Locks, Oregon:

Passenger auto or pickup truck.....	\$0.50
Auto or pickup truck and one axle trailer	0.75
Auto or pickup truck and two axle trailer	1.00
Truck—2 axles.....	1.00
Truck—3 axles.....	1.50
Truck—4 axles.....	2.00
Truck—5 axles.....	2.50
Truck—6 axles.....	3.00
Bus	1.25
Motorcycles	0.25
Pedestrians and bicycles.....	0.10

No charge for passengers in vehicles. The company reserves the right to grant specific discount rates for multiple use of the bridge.

Any interested party may participate in the proposed rule making by submitting in writing in duplicate such data,

views, or arguments pertaining thereto as he may desire to the District Engineer, U.S. Army Engineer District, Portland, 628 Pittock Block SW., 10th Avenue and Washington Street, Portland 5, Oregon, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-10911; Filed, Dec. 23, 1959; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[411.4]

CHOLIC ACID, DL-ISOLEUCINE, AND DL-METHIONINE

Change of Tariff Classification

DECEMBER 18, 1959.

The Bureau of Customs published a notice in the FEDERAL REGISTER dated November 13, 1959, that there was under review the practice of classifying disoleucine under paragraph 5, Tariff Act of 1930, as a chemical compound, not specially provided for, dutiable at the rate of 10½ percent ad valorem under that paragraph, as modified, and the practice of classifying cholic acid and dl-methionine under paragraph 34 as drugs, natural and uncomounded, not edible, not specially provided for, but advanced in condition or value, and dutiable at the rate of 5 percent ad valorem

under that paragraph, as modified. Evidence presented to the Bureau shows that none of these products is chiefly used as a medicinal and that dl-isoleucine and dl-methionine are amino acids. Accordingly, the Bureau by its letter to the collector of customs at New York, New York, dated December 18, 1959, ruled that these products are properly classifiable under paragraph 1 as acids, not specially provided for, and dutiable at the rate of 12½ percent ad valorem under that paragraph, as modified.

As this ruling will result in the assessment of duty at a higher rate than has heretofore been assessed under a uniform and established practice, it shall be applied to such or similar merchandise only when entered, or withdrawn from warehouse, for consumption after 90 days after the date of publication of an abstract of this decision in the weekly Treasury Decisions.

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

[F.R. Doc. 59-10939; Filed, Dec. 23, 1959; 8:49 a.m.]

Office of the Secretary

[T.D. 55006]

HARDBOARD FROM SWEDEN

Antidumping

DECEMBER 18, 1959.

After due investigation, I find, as of December 18, 1959, that the following

exporters of hardboard from Sweden are no longer selling, or likely to sell, hardboard to the United States at less than its fair value:

Pilgrimstads A/B.
Torsviks Sagsverks A/B.
Midnas Industri A/B.
Karlholms A/B.

The finding of dumping made August 26, 1954, as modified by T.D. 54168 and T.D. 54199, is further modified accordingly.

[SEAL] LAURENCE B. ROBBINS,
Acting Secretary of the Treasury.

[F.R. Doc. 59-10940; Filed, Dec. 23, 1959;
8:49 a.m.]

[AA 643.3]

SHOVELS FROM JAPAN

Determination of No Sales at Less Than Fair Value

DECEMBER 17, 1959.

A complaint was received that shovels from Japan were being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that shovels from Japan are not being, nor are likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The shovels sold for home consumption in Japan were found to be similar to the shovels sold to the United States, within the meaning of section 212(E) of the Antidumping Act, despite certain physical differences in the shovels compared.

The sales to the United States were in two categories: (1) Arms-length transactions; (2) sales to wholly-owned subsidiaries. Purchase price was used for the first category, and exporter's sales price was used for the second category for the purpose of the fair value comparison.

The quantity of similar shovels sold for home consumption in Japan was adequate to form a basis for a fair value comparison. Accordingly home market price was compared with purchase price and with exporter's sales price, whichever was applicable.

It was determined that purchase price was not lower than home market price, and that exporter's sales price was not lower than home market price. In the early part of the period under consideration, a relatively small quantity was imported as to which there appeared to be a slight dumping margin. This was deemed to be not more than insignificant. In arriving at the home market price for the purpose of the fair value comparison, due allowance was made for differences in cost of manufacture, for higher packing costs involved in connection with exports to the United States, and for differences in inland freight and f.o.b. charges.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Anti-

dumping Act, 1921, as amended (19 U.S.C. 160(c)).

LAURENCE B. ROBBINS,
Acting Secretary of the Treasury.

[F.R. Doc. 59-10941; Filed, Dec. 23, 1959;
8:49 a.m.]

DEPARTMENT OF THE INTERIOR

BONNEVILLE POWER ADMINISTRATION

Redelegations of Authority

Sections 1 to 13.50 issued under Secretary's Order No. 2563, 15 F.R. 3193; Secretary's Order No. 2753, as amended, 23 F.R. 9789. Additional authority is cited in parentheses following the sections affected.

1. *Acting Administrator—Succession and Authority.* a. The line of succession as Acting Administrator is prescribed in the Departmental Manual (302 DM 4.9) and provides that in case of the death, resignation, or absence of the Administrator, the following officers or employees shall act as Administrator in the order indicated:

- (1) Assistant Administrator
- (2) Chief Engineer
- (3) Director of Administrative Management
- (4) Director of Operations and Maintenance
- (5) Deputy Director of Administrative Management, or Deputy Chief Engineer.

For the purpose of this paragraph, the Administrator, without prior approval by the Office of the Secretary, may designate either one as Acting Administrator for a period not to exceed seven days.

b. The Acting Administrator shall perform the duties and exercise the powers of the Administrator except where otherwise provided by law, or Departmental regulation. Any person exercising the functions of the Acting Administrator shall sign documents as "Acting Administrator."

c. (1) The line of succession as Emergency Administrator in a civil defense emergency and regulations pertaining thereto are prescribed in a chapter of the Departmental Manual (205 DM 4.). That chapter provides that when a civil defense emergency exists and the normal chain of command is not operative and the Administrator and all of the officials designated pursuant to 302 DM 4.9 are unable to function as Acting Administrator, the following officers or employees shall act as Emergency Administrator in the order indicated, when they have been officially advised or have determined that a civil defense emergency exists:

- (a) Manager, Seattle Area Office.
- (b) Manager, Spokane Area Office.
- (c) Manager, Portland Area Office.
- (d) District Manager, Eugene, Oreg.
- (e) District Manager, Kalispell, Mont.
- (f) District Manager, Wenatchee, Wash.
- (g) District Manager, Walla Walla, Wash.

(2) The official in charge of any area, district, field office, or other field installation, when he is officially advised or has determined that a civil defense

emergency exists, may exercise the full authority of the Administrator with respect to the particular activity for which he is responsible when necessary to insure continuity of essential functions in the field or to carry out his programs locally.

(3) Within the limitations prescribed above, the foregoing officials are authorized to exercise the full authority of the Administrator when the nature of the situation requires emergency action or does not permit referral to higher authority. However, before exercising such authority the official shall determine in so far as possible that neither the Administrator nor anyone authorized to act for him nor whose title precedes his in the above listing, is able to exercise such authority.

(4) Officials exercising emergency authority as Administrator under paragraph (1) above shall sign documents as "Emergency Administrator, Bonneville Power Administration." Officials exercising emergency authority as Administrator pursuant to paragraph (2) above shall sign documents as "Emergency Administrator" followed by the appropriate designation of the described installation and the name of the bureau. For example, "Emergency Administrator, Walla Walla District Office, Bonneville Power Administration."

(5) Officials exercising emergency authority as Administrator shall keep a record of the actions which they have taken and of the period during which they exercised the authority.

(6) Officials exercising emergency authority as Administrator shall continue to exercise such authority at their headquarters until either: normal arrangements become operative again; they are directed to proceed to a relocation center; or other delegations of authority are placed into effect.

[302 DM 4.9; 205 DM 4]

2. *Designation of Other Acting Officials.* a. Where a deputy or assistant head exists and is available, such deputy or assistant (or if more than one, the person designated by competent authority) shall serve as the acting head of the organizational unit during the unavailability of the head of such unit, and in the absence of a specific designation to the contrary.

b. Arrangements shall be made whenever possible for automatic succession to fill positions in the event of a vacancy or the absence of the incumbent; especially positions involving the exercising of direction and supervision, or to which authority has been delegated.

In providing for automatic succession, designations shall be made or approved by the official who exercises supervision over the position; the number of designations for a given position shall be sufficient to provide for multiple absences among those designated if such absences occur frequently; records shall be kept of periods during which and by whom the duties of the position are temporarily assumed; and designations of persons to serve in an acting capacity shall be filed with the Mail and Files Section.

c. When provisions for automatic succession are inadequate, temporary ar-

rangements shall be made in a manner similar to that in which automatic succession is provided. Temporary arrangements shall specify in so far as possible the period covered.

d. Employees serving in an "acting" capacity shall perform the duties and exercise the powers of the position and shall sign all documents in an "acting" capacity.

[302 DM 1]

3. *Delegated Authority—Limitation.* All authority delegated herein, except authority with respect to which the Administrator has only limited authority of redelegation, may be exercised by all the supervisors of the delegatee. All delegated authority shall be exercised in accordance with applicable statutes, regulations, orders and instructions, and in accordance with such policies as may be established from time to time by the Administrator, Assistant Administrator, or Acting Administrator. No delegated authority can exceed the authority held by the person making the delegation. Failure to comply with administrative procedures and controls shall not impair the legal authority delegated, but may be grounds for appropriate disciplinary measures.

[200 DM 2]

4. *Redelegation of Authority by Division Directors.* a. Unless otherwise provided, and to the extent permitted by law, or Departmental regulations, the director of a division may, in writing and with the written approval of the Assistant Administrator:

(1) redelegate to officers and employees of his division, in whole or in part, the authority herein or hereafter delegated to him or to any employee under his jurisdiction;

(2) withdraw to himself any of the authority delegated to an employee of his division.

b. If the initial delegation of authority was published in the FEDERAL REGISTER, all further redelegations of such authority must also be published.

[200 DM 2]

5. *Assistant Administrator.* a. The Assistant Administrator may perform all duties and exercise the powers of the Administrator except those which the Administrator cannot redelegate or can redelegate only to a specified number of persons.

*[b. He may authorize or approve the attendance of employees at meetings or conventions of members of societies or associations concerned with the work of the Administration.]

c. He is designated the Administration's Inspection Officer with responsibility for carrying out its activities as part of the Departmental inspection program.]

[(Secretary's Order No. 2576, as amended; 351 DM 2)]

6. *Contracts for Engineering and Architectural Services.* a. The Chief Engineer may exercise the authority

*Portion in brackets not for publication in the FEDERAL REGISTER since it relates solely to internal management.

delegated to the Secretary of the Interior by the Administrator of General Services (24 F.R. 1921, 2096), originally redelegated to the Bonneville Power Administrator by Secretary's Order No. 2774 (19 F.R. 7625), and reaffirmed by Secretary's Order No. 2838 (24 F.R. 2661) to enter into contracts for engineering and architectural services in connection with the activities of the Bonneville Power Administration, without advertising pursuant to Section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 393, 41 U.S.C. 252(c)1].

b. The authority delegated by subsection "a." may not be redelegated.

[(Secretary's Order No. 2774, 19 F.R. 7625; Secretary's Order No. 2838, 24 F.R. 2661; 404 DM 1)]

7. *Land Activities.* a. The Chief of the Branch of Land may:

(1) Authorize the purchase of all interests in real estate necessary for the Administration's program, except electric utility system real properties, and authorize payment therefor;

(2) Negotiate and execute agreements for the acquisition of all interests in real estate and other rights and privileges pertaining to real property necessary for the Administration's program, except electric utility system real properties;

(3) Approve appraisals;

(4) Negotiate for the disposal of land and real property rights, except electric utility system real properties, for which the Administration is the authorized disposal agency under delegations heretofore or hereafter made pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 378, as amended; 40 U.S.C., Sec. 471, et seq.)

(5) Determine, for the purpose of making reimbursements pursuant to the Act of May 29, 1958 (72 Stat. 152; 43 U.S.C. 1231 et seq.), the fair value of any parcel of land acquired by the Administration, fix the amounts of reimbursement to which owners and tenants of such parcels of land may be entitled under said Act for moving expenses, losses and damages, and authorize payment therefor;

(6) Execute agreements under which the Administration grants rights or privileges pertaining to real property;

(7) Authorize the publication of advertisements, notices, or proposals when required by law, and authorize payment therefor, pursuant to Section 3828 of the Revised Statutes (16 Stat. 308; 44 U.S.C. 324);

(8) Execute trust fund agreements for the accomplishment of work for others relating to real property owned by the Government, and other agreements necessary for the protection of land rights obtained by the Government, except those involving power contracts;

(9) Issue purchase orders for procuring title services.

b. The Principal Appraiser may exercise the authority delegated by "a." (3) of this section.

c. The Principal Negotiator, the Principal Title Officer, and the Assistant to the Chief, Branch of Land, each may

exercise the authority delegated by "a." (2) and (4) of this section, and, when the amount involved does not exceed \$1,500, the authority delegated by paragraphs "a." (1), (6), (7), and (8) of this section.

d. The Principal Title Officer may exercise the authority delegated by "a." (9) of this section when the amount does not exceed \$1,500, and the Law Clerk (Land) for land activities may exercise similar authority when the amount involved does not exceed \$100.

[(Secretary's Order No. 2840, 24 F.R. 3615; Secretary's Order No. 2830, 23 F.R. 7127; 205 DM 5.1)]

8. *Construction and clearing contracts.* The Assistant to the Chief Engineer may execute contracts and amendments to contracts for construction or clearing without monetary limitation; provided that changes, extra work, or adjustments necessary because of changed conditions, and appropriate time extensions therefor may be authorized by the Chief of Construction for transactions not exceeding \$5,000 or 25 per cent of the amount of the original contract, whichever is smaller.

9. *Operations and Maintenance.* a. The Director of Operations and Maintenance may execute any document and exercise any authority conferred upon the Power Manager or Assistant Power Manager (which positions no longer exist) under contracts executed prior to September 12, 1954.

b. The Deputy Director of Operations and Maintenance may compromise and finally settle any claim for charges arising under any contract for power delivered or transferred to or for a customer.

c. The Chief of Customer Service and Power Requirements may:

(1) Make interim arrangements for the short term sale, purchase, exchange, or wheeling of power including the charges applicable thereto, such arrangements to be confirmed in writing and subsequently formalized by contracts executed by the Administrator or Assistant Administrator;

(2) Approve, in writing, a purchaser's resale rate schedules and any additions or modifications thereof, pursuant to a power contract providing therefor;

(3) Approve load estimates of customers for use in resale rate determinations and service planning.

d. The Chief of System Operations and Power Resources may:

(1) Execute agreements with customers for the operation or maintenance of their equipment installed on premises of the Administration;

(2) Execute agreements for the operation or maintenance by customers of equipment of the Administration;

(3) Make agreements with customers which establish capabilities of their generating facilities for the purpose of applying the computed demand provision of rate schedules.

e. The Power Dispatchers of the Branch of System Operations and Power Resources each may make emergency arrangements for the sale, purchase, exchange, or wheeling of power including the charges applicable thereto, when an

outage or similar emergency requires such action to prevent disruption of service or to restore interrupted service on the Administration's system or an interconnected system.

f. The Chief of Maintenance and the Chief of System Operations and Power Resources each may make arrangements with customers and other persons for them to perform services and to furnish materials or equipment for the Administration when an outage or similar emergency requires the immediate performance of the services and the furnishing of materials. Such arrangements may involve purchase, hire, or loan of equipment, materials, and services deemed necessary to correct the outage or emergency.

g. The Area Managers, with respect to matters wholly within their respective areas, may:

(1) Exercise the authority delegated by paragraphs "c," (1) and "f." of this section;

(2) Exercise the authority delegated by paragraph "e." of this section when communication facilities are disrupted so that the power dispatchers of the Branch of System Operations and Power Resources are unable to exercise the authority of said paragraph;

(3) Execute joint pole contact agreements.

h. The Superintendents of Transmission Maintenance of the respective area offices each may, when the payment involved does not exceed \$200, make arrangements and execute agreements with property owners for temporary access to Bonneville Power Administration rights-of-way. This authority may be exercised only when it is advantageous to the Government in terms of efficiency and economy to use such temporary access.

10. *Claims.* a. The head of the Disbursement Audit Section may compromise and finally settle any claim arising under any contract (except power contracts) which the Administrator is authorized to settle under the Bonneville Project Act of August 20, 1937, as amended.

b. (1) The Assistant to the Administrator may, when the amount involved does not exceed \$200, determine, settle, compromise, and pay claims for damage to real and personal property which the Administrator is authorized to settle under Section 12(a) of the Bonneville Project Act of August 20, 1937, as amended.

(2) The Area Manager and the Field Contact Officer for the respective area offices each may exercise the authority delegated by "b." (1) of this section when the amount involved does not exceed \$100.

11. *Emergency Procurement and Hiring.* Administration personnel who have been issued valid "Disaster Authority" cards (BPA Form No. 83), are authorized on behalf of the United States to acquire materials, services, and equipment, and to employ, for periods of not to ex-

ceed 30 days, temporary personnel needed to maintain continuity of power service and operation of the Bonneville Power Administration transmission system in emergency situations caused by military attack, serious fire, flood, earthquake, or similar disaster.

[(Secretary's Order No. 2751, as amended)]

12. *Materials and Equipment Contracts.* a. The Chief of Supply, without monetary limitation, may:

(1) execute contracts, amendments to contracts, and procurement transactions for materials, equipment and services, including the exchange or sale of personal property for replacement purposes, except personal services and services in connection with the transfer or transmission of electrical energy;

(2) execute contracts and amendments to contracts for the disposal of surplus property, except electric utility system real properties, for which the Administration is the authorized disposal agency under delegations heretofore or hereafter made pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 378, as amended; 40 U.S.C., Sec. 471, et seq.);

(3) authorize the publication of advertisements, notices, or proposals, pursuant to Section 3828 of the Revised Statutes (16 Stat. 308; 44 U.S.C. 324).

b. The Head of the Procurement Section may exercise the authority delegated to the Chief of Supply when the amount involved does not exceed \$50,000.

c. The Purchasing Agents each may exercise the authority delegated by "a." (1) and "a." (3) of this section when the amount involved does not exceed \$2,500.

[(Secretary's Order No. 2830, 23 F.R. 7127; Secretary's Order No. 2642, as amended, 16 F.R. 6318, 19 F.R. 7417; 404 DM 1; 205 DM 5.1)]

13. *Personnel—Paid Advertising for Recruitment Purposes.* The Director of Personnel may authorize paid advertising for recruiting for occupations that are in short supply, in accordance with the standards relative to paid advertising contained in Chapter R 2, Federal Personnel Manual.

[379 DM 8.9]

14-19. *Reserved.*

(20-49. Cover present or future delegations affecting internal operations only and are not published in the FEDERAL REGISTER.)

50. *Revocation.* These redelegations supersede the redelegations of authority published in the FEDERAL REGISTER March 9, 1955 (20 F.R. 1412) as heretofore amended, and all other existing delegations issued by the Administrator inconsistent with these delegations.

Dated: December 18, 1959.

WILLIAM A. PEARL,
Administrator.

[F.R. Doc. 59-10969; Filed, Dec. 23, 1959; 8:50 a.m.]

Bureau of Land Management

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 15, 1959.

The United States Forest Service of the Department of Agriculture has filed an application, Serial Number Colorado 030420, for the withdrawal of the lands described below from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for use as campgrounds, recreation areas, picnic grounds and administrative sites in San Juan and Pike National Forests.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado State Office, 339 New Custom House, P.O. Box 1018, Denver 1, Colorado.

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:

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO
SAN JUAN NATIONAL FOREST

Columbine Ranger Station and Purgatory Campground

T. 39 N., R. 9 W.,
Sec. 24, SE $\frac{1}{4}$ SW $\frac{1}{4}$ less the area within the Sara G. Iode mining claim, Mineral Survey 20762;
Sec. 25, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Vallecito Campground

T. 37 N., R. 6 W.,
Sec. 16, lots 1 and 2.

Wolf Creek Campground

T. 37 N., R. 1 E.,
Sec. 16, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Williams Lake Recreation Area

T. 38 N., R. 3 W.,
Sec. 19, lots 5, 7, and 8;
Sec. 30, lot 2 and W $\frac{1}{2}$ of lot 1.

The above areas aggregate 356.59 acres.

SIXTH PRINCIPAL MERIDIAN, COLORADO

PIKE NATIONAL FOREST

Bailey Campground

T. 7 S., R. 72 W.,
Sec. 30, lot 5 and W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Camp Leslie Deal Organization Camp

T. 7 S., R. 73 W.,
Sec. 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Chaseville Picnic Ground & Byers Boys Camp

T. 7 S., R. 74 W.,
Sec. 12, W $\frac{1}{2}$ SW $\frac{1}{4}$.

Deer Creek Camp Ground

T. 6 S., R. 73 W.,
Sec. 21, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Devils Head Picnic Ground

T. 9 S., R. 69 W.,
Sec. 15, NW $\frac{1}{4}$.

Geneva Creek Camp Ground

T. 6 S., R. 75 W.,
Sec. 13, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Gibson Trail Camp Ground

T. 6 S., R. 75 W.,
Sec. 30, W $\frac{1}{2}$ of lot 14.

Hall Valley Camp Ground

T. 6 S., R. 75 W.,
Sec. 32, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Jarre Canyon Picnic Ground

T. 8 S., R. 69 W.,
Sec. 1, assuming lot 12 and 13 to be full
40 acre subdivisions:
S $\frac{1}{2}$ of lot 12;
N $\frac{1}{2}$ of lot 13.

Kelsey Creek Camp Ground

T. 8 S., R. 70 W.,
Sec. 29, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Lone Rock Camp Ground

T. 9 S., R. 70 W.,
Sec. 21, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Lost Park Camp Ground

T. 9 S., R. 73 W.,
Sec. 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$
NW $\frac{1}{4}$.

Lower Michigan Creek Camp Ground

T. 8 S., R. 75 W.,
Sec. 35, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

*Meridian Camp Ground and Camp Rosalie
Organization Camp*

T. 6 S., R. 73 W.,
Sec. 15, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
Sec. 22, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Rock Springs Camp Ground

T. 8 S., R. 69 W.,
Sec. 34, assuming lots 8 and 9 to be full
40 acre subdivisions:
S $\frac{1}{2}$ of lot 8;
N $\frac{1}{2}$ of lot 9.

Top of the World Picnic Ground

T. 8 S., R. 70 W.,
Sec. 5, lot 5 and 12.

Virgin's Bath Overlook

T. 9 S., R. 69 W.,
Sec. 21, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and
N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Wigwam Camp Ground

T. 9 S., R. 70 W.,
Sec. 30, lots 6 and 7.

Indian Creek Administrative Site

T. 8 S., R. 69 W.,
Sec. 3, lot 20.

Devils Head Lookout Administrative Site

T. 9 S., R. 69 W.,
Sec. 15, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$
and E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 22, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

The above areas aggregate approxi-
mately 1,144.82 acres.

The total areas in San Juan and Pike
National Forests aggregate approxi-
mately 1,501.41 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F.R. Doc. 59-10924; Filed, Dec. 23, 1959;
8:47 a.m.]

[Notice 5]

ANCHORAGE LAND DISTRICT

**Notice of Filing of Alaska Protraction
Diagram**

DECEMBER 16, 1959.

Notice is hereby given that effective
with this publication, the following pro-
traction diagrams are officially filed of
record in the Anchorage Land Office, 334
East Fifth Avenue, Anchorage, Alaska.
In accordance with 43 CFR 192.42a(c),
(24 F.R. 4140, May 22, 1959), these pro-
tractions will become the basic record
for the description of oil and gas lease
offers filed at and subsequent to 10:00
a.m. on the thirty-first day after the
publication of this notice.

ALASKA PROTRACTION DIAGRAM (UNSURVEYED)

- S 2-1, T. 33 N., Rs. 1 to 4 W., Seward Merid-
ian;
- S 2-2, T. 33 N., Rs. 5 to 8 W., Seward Merid-
ian;
- S 2-3, T. 33 N., Rs. 9 to 12 W., Seward Merid-
ian;
- S 2-4, T. 33 N., Rs. 13 to 16 W., Seward Merid-
ian;
- S 2-5, Ts. 29 to 32 N., Rs. 13 to 16 W., Seward
Meridian;
- S 2-6, Ts. 29 to 32 N., Rs. 9 to 12 W., Seward
Meridian;
- S 2-7, Ts. 29 to 32 N., Rs. 5 to 8 W., Seward
Meridian;
- S 2-8, Ts. 29 to 32 N., Rs. 1 to 4 W., Seward
Meridian;
- S 2-9, Ts. 25 to 28 N., Rs. 1 to 4 W., Seward
Meridian;
- S 2-10, Ts. 25 to 28 N., Rs. 5 to 8 W., Seward
Meridian;
- S 2-11, Ts. 25 to 28 N., Rs. 9 to 12 W., Seward
Meridian;
- S 2-12, Ts. 25 to 28 N., Rs. 13 to 16 W., Seward
Meridian;
- S 2-13, Ts. 21 to 24 N., Rs. 13 to 16 W., Seward
Meridian;
- S 2-14, Ts. 21 to 24 N., Rs. 9 to 12 W., Seward
Meridian;
- S 2-15, Ts. 21 to 24 N., Rs. 5 to 8 W., Seward
Meridian;
- S 2-16, Ts. 21 to 24 N., Rs. 1 to 4 W., Seward
Meridian;
- S 2-17, Ts. 17 to 20 N., Rs. 1 to 4 W., Seward
Meridian;
- S 2-18, Ts. 17 to 20 N., Rs. 5 to 8 W., Seward
Meridian;
- S 2-19, Ts. 17 to 20 N., Rs. 9 to 12 W., Seward
Meridian;
- S 2-20, Ts. 17 to 20 N., Rs. 13 to 16 W., Seward
Meridian.

Copies of these diagrams are for sale
at one dollar (\$1.00) per sheet by the
Cadastral Engineering Office, Bureau of
Land Management, mailing address: 334
East Fifth Avenue, Anchorage, Alaska.

IRVING W. ANDERSON,
Manager, Anchorage Land Office.

[F.R. Doc. 59-10932; Filed, Dec. 23, 1959;
8:48 a.m.]

[Notice 6]

ANCHORAGE LAND DISTRICT

**Notice of Filing of Alaska Protraction
Diagram**

DECEMBER 16, 1959.

Notice is hereby given that effective
with this publication, the following pro-
traction diagrams are officially filed of
record in the Anchorage Land Office, 334
East Fifth Avenue, Anchorage, Alaska.
In accordance with 43 CFR 192.42a(c),
(24 F.R. 4140, May 22, 1959), these pro-
tractions will become the basic record
for the description of oil and gas lease
offers filed at and subsequent to 10:00
a.m. on the thirty-first day after the
publication of this notice.

ALASKA SUPPLEMENTAL PROTRACTION DIAGRAM

- S 16-1, Kenai Supplemental Protraction Dia-
gram;
- S 16-2, Supplemental Protraction Diagram,
Explanatory Statement;
- S 16-3, Ts. 1 to 4 N., Rs. 1 to 4 W., Seward
Meridian;
- S 16-4, Ts. 1 to 4 N., Rs. 5 to 8 W., Seward
Meridian;
- S 16-5, Ts. 1 to 4 N., Rs. 9 to 12 W., Seward
Meridian;
- S 16-6, Ts. 5 to 8 N., Rs. 1 to 4 W., Seward
Meridian;
- S 16-7, Ts. 5 to 8 N., Rs. 5 to 8 W., Seward
Meridian;
- S 16-8, Ts. 5 to 8 N., Rs. 9 to 12 W., Seward
Meridian;
- S 16-9, Ts. 9 to 12 N., Rs. 1 to 4 W., Seward
Meridian;
- S 16-10, Ts. 9 to 12 N., Rs. 5 to 8 W., Seward
Meridian;
- S 16-11, Ts. 9 to 12 N., Rs. 9 to 12 W., Seward
Meridian;
- S 16-12, Ts. 1 to 4 S., Rs. 1 to 4 W., Seward
Meridian;
- S 16-13, Ts. 1 to 4 S., Rs. 5 to 8 W., Seward
Meridian;
- S 16-14, Ts. 1 to 4 S., Rs. 9 to 12 W., Seward
Meridian;
- S 16-15, Ts. 1 to 4 S., Rs. 13 to 16 W., Seward
Meridian;
- S 16-16, Ts. 5 to 8 S., Rs. 1 to 4 W., Seward
Meridian;
- S 16-17, Ts. 5 to 8 S., Rs. 5 to 8 W., Seward
Meridian;
- S 16-18, Ts. 5 to 8 S., Rs. 9 to 12 W., Seward
Meridian;
- S 16-19, Ts. 5 to 8 S., Rs. 13 to 16 W., Seward
Meridian;
- S 16-20, Ts. 9 to 12 S., Rs. 5 to 8 W., Seward
Meridian;
- S 16-21, Ts. 9 to 12 S., Rs. 9 to 12 W., Seward
Meridian;
- S 16-22, Ts. 9 to 12 S., Rs. 13 to 16 W., Seward
Meridian.

Copies of these diagrams are for sale
at one dollar (\$1.00) per sheet by the
Cadastral Engineering Office, Bureau of
Land Management, mailing address: 334
East Fifth Avenue, Anchorage, Alaska.

IRVING W. ANDERSON,
Manager, Anchorage Land Office.

[F.R. Doc. 59-10933; Filed, Dec. 23, 1959;
8:48 a.m.]

**COMMISSION ON INTERNATIONAL
RULES OF JUDICIAL PROCEDURE
STATEMENT OF ORGANIZATION AND
FUNCTIONS**

Creation and purpose. The Commis-
sion on International Rules of Judicial

Procedure was created by Public Law 85-906 (72 Stat. 1743) approved September 2, 1958, to study and investigate existing practices of judicial assistance and cooperation between the United States and foreign countries, and to make recommendations for the improvement of international legal practice and procedure. The life of the Commission was extended to December 31, 1961 by Public Law 86-287 (73 Stat. 567).

Organization of Commission. The Commission consists of nine members:

(a) Three public members and two officials of State governments appointed by the President;

(b) Two representatives of the Department of State appointed by the Secretary of State;

(c) Two representatives of the Department of Justice appointed by the Attorney General.

The members of the Commission elect their Chairman.

Director of the Commission and staff. The chief administrative officer of the Commission is a Director, appointed by the Commission, who serves as the Commission's reporter, and, subject to the direction of the Commission, supervises the activities of persons employed under the Commission.

Advisory Committee. Public Law 85-906 provides that the Advisory Committee on International Rules of Judicial Procedure be appointed by the Commission. The Advisory Committee is selected from "lawyers, judges of Federal and State courts, and other persons competent to provide advice for the Commission."

Location of office and business hours. The principal office of the Commission is 718 Jackson Place NW., Washington, D.C., and requests for information concerning the Commission and its activities should be addressed to the Director, Commission on International Rules of Judicial Procedure, Washington 25, D.C. The office is open for business from 9:00 a.m. to 5:30 p.m., Monday through Friday of each week.

Dated: December 18, 1959.

HARRY LEROY JONES,
Director.

[F.R. Doc. 59-10925; Filed, Dec. 23, 1959;
8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 9973]

COACH INVESTIGATION NEW YORK CITY MARKETS

Notice of Hearing

In the matter of an investigation of coach-type service between New York, New York on the one hand, and Chicago, Ill., Washington, D.C., Buffalo, Syracuse, and Rochester, New York, Providence, Rhode Island, and Cleveland, Cincinnati, and Columbus, Ohio on the other.

Notice is hereby given pursuant to the Federal Aviation Act of 1958, and particularly sections 205(a), 404(a), and 1002 (b) and (c) of said Act, that a hearing in the above-entitled proceeding is

assigned to be held on January 12, 1960, at 2 p.m., e.s.t., in room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington 25, D.C., before Examiner Paul N. Pfeiffer.

Without limiting the scope of the issues to be considered, particular attention will be directed to the following matters:

1. Whether the air carriers authorized and required by the terms of their certificates of public convenience and necessity to furnish interstate air transportation in the following markets are providing adequate coach-type service:

New York-Chicago.
New York-Washington.
New York-Buffalo.
New York-Cleveland.
New York-Syracuse.
New York-Rochester.
New York-Providence.
New York-Cincinnati.
New York-Columbus.

2. If not, whether the failure to render adequate coach-type service has resulted in a failure to render adequate service within the meaning of section 404(a) of the Act;

3. Whether the Board should issue an appropriate order pursuant to section 1002(c) of the Act compelling such air carriers to provide adequate service in said markets in full compliance with the requirements of section 404(a) of the Act; and

4. What standards should be applied for the determination of the adequacy of coach service in the markets under consideration, and the subsidiary questions:

(a) Can coach service be provided economically in the markets under consideration?

(b) Whether one or more respondent air carriers should be required to place into operation a type of aircraft different from that which they are presently operating?

(c) Whether one or more air carrier respondents should be required to inaugurate a non-reservation, hourly (except midnight to 6 a.m.) coach service between New York-Washington and New York-Chicago, *inter alia*?

Notice is further given that any person other than parties of record desiring to be heard in this proceeding should file with the Board on or before January 12, 1960, a statement setting forth the issues of fact or law to be presented.

Dated at Washington, D.C., December 17, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59-10937; Filed, Dec. 23, 1959;
8:48 a.m.]

[Docket 10983]

LAKE CENTRAL AIRLINES, INC.

Notice of Hearing

In the matter of the amendment of the certificate of public convenience and necessity of Lake Central Airlines, Inc.

Notice is hereby given pursuant to the Federal Aviation Act of 1958, that the

hearing in the above-entitled proceeding will be held January 4, 1960 at 10:00 a.m., e.s.t., in Room 704, Universal Building, 1825 Connecticut Avenue NW., Washington 25, D.C., before Examiner Herbert K. Bryan.

Dated at Washington, D.C., December 17, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59-10938; Filed, Dec. 23, 1959;
8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13062; FCC 59M-1727]

CHE BROADCASTING CO. (NSL)

Order Continuing Hearing

In re application of CHE Broadcasting Company (NSL), Albuquerque, New Mexico, Docket No. 13062, File No. BP-11842; for construction permit.

The Hearing Examiner having under consideration applicant's request, in a letter dated December 11, 1959, and received by Mail and Files on December 16, 1959, for continuance of the hearing of December 18, 1959, to permit preparation of applicant's case;

It appearing that counsel for the Broadcast Bureau has no objection to a continuance;

It is ordered, This 17th day of December 1959 that

1. The hearing of December 18, 1959 is continued to Thursday, February 18, 1960, at 10 a.m., in the offices of the Commission, Washington, D.C.

2. Applicant shall furnish counsel for the Broadcast Bureau and the Hearing Examiner copies of its proposed exhibits on or before February 11, 1960.

Released: December 17, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10944; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 12615 etc.; FCC 59M-1728]

COOKEVILLE BROADCASTING CO.

Order Scheduling Prehearing Conference

In re applications of Hamilton Parks, tr/as Cookeville Broadcasting Company, Cookeville, Tennessee et al., Docket No. 12615, File No. BP-11518; Docket Nos. 12960, 12962, 12964, 12965, 12966, 12967, 12968, 12970, 12971, 12972, 12973, 12974, 12977, 12978, 12979, 12981, 12982, 12983, 12984; for construction permits.

Pursuant to agreements derived at the further prehearing conference held on this date as shown by the transcript record thereof, which is made a part of the record in this proceeding,

It is ordered, This 16th day of December, 1959, that a further prehearing

conference will be commenced at 10:00 a.m. on Friday, January 8, 1960, and

It is further ordered. That the order dated and released on December 15, 1959 is amended so as to provide that responsive pleadings to all amendment proposals pending as of December 31, 1959, may be filed not later than Wednesday, January 6, 1960, and that oral argument upon such pleadings will be heard at the further prehearing conference hereinabove ordered.

Released: December 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10945; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 13315 etc.; FCC 59-1270]

EASTERN STATES BROADCASTING CORP. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Eastern States Broadcasting Corporation, Bridgeton, New Jersey (WSNJ-FM), Docket No. 13315, File No. BPH-2739; Has: 98.9 Mc, #255; 9 kw; 480 ft.; Req: 107.7 Mc, #299; 15.2 kw; 486 ft.; Bulletin Company, Philadelphia, Pennsylvania, Docket No. 13316, File No. BPH-2740; Req: 98.9 Mc, #255; 4.60 kw; 840 ft.; Pillar of Fire, Inc. (WAWZ-FM), Zarephath, New Jersey, Docket No. 13317, File No. BPH-2789; Has: 99.1 Mc, #256; 4.8 kw; 175 ft.; Req: 99.1 Mc, #256; 20 kw; 175 ft.; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 16th day of December 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated October 16, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the

grounds and reasons precluding a grant and requiring an evidentiary hearing on the particular issues as hereinafter specified; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered. That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the area and population within the 1 mv/m contour of the operation proposed by the Bulletin Company and the availability of other such FM broadcast service to the said area and population.

2. To determine the areas and populations within the 1 mv/m contours which may be expected to gain or lose service from the proposed operations of Stations WSNJ-FM and WAWZ-FM and the availability of other such FM broadcast service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing FM broadcast stations, the areas and populations affected thereby, and the availability of other FM service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposal of Bulletin Company would involve objectionable interference with Station WJBR-FM, Wilmington, Delaware, or any other existing FM broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other service to such areas and populations.

5. To determine whether the instant proposal of Pillar of Fire, Inc., would involve objectionable interference with Stations WBAI-FM and WOR-FM, New York, New York, or any other existing FM broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other service to such areas and populations.

6. To determine in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient, and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced, pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

It is further ordered. That WBAI, Inc., John Beauchamps Reynolds, and RKO

General, Inc., licensees of Stations WBAI-FM, WJBR-FM, and WOR-FM, respectively, are made parties to the proceeding.

It is further ordered. That in the event of grants of the applications of Eastern States Broadcasting Corporation (WSNJ-FM) and the Bulletin Company, the construction permit for the Bulletin Company shall contain a condition that program tests shall not be authorized until Station WSNJ-FM begins program tests on another frequency and that a station license shall not be issued until Station WSNJ-FM is licensed for another frequency.

It is further ordered. That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered. That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10946; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 13253; FCC 59M-1730]

MADISON BROADCASTERS

Order Scheduling Prehearing Conference

In re application of John W. Ecklin and James C. Grisham d/b as Madison Broadcasters, Madison, S. Dak., Docket No. 13253, File No. BP-12222; for construction permit.

It is ordered. This 17th day of December 1959, that the hearing now scheduled for January 4, 1960 in the above-entitled matter is continued to a date to be established by subsequent order; and

It is further ordered. That a prehearing conference in this matter, pursuant to § 1.111 of the Commission's rules, is hereby scheduled to commence at 10:00 a.m., January 4, 1960 in the Commission's offices in Washington, D. C.; and

It is further ordered. That at the prehearing conference, in addition to the matters usually considered under § 1.111 of the Commission's rules, there will be oral argument on the question of granting what purports to be a petition to

amend the subject application filed November 2, 1959.

Released: December 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10947; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 13307 etc.; FCC 59-1269]

A. F. MISCH ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of A. F. Misch, Coffeyville, Kans., Docket No. 13307, File No. BP-11932; Requests: 1370 kc, 500 w, Day; Beloit Broadcasters, Incorporated (WBEL), South Beloit, Ill., Docket No. 13308, File No. BP-12101; Has: 1380 kc, 5 kw, DA-2, U, Requests: 1380 kc, 5 kw, DA-N, U; Samuel A. Burk and Ralph J. Bitzer, d/b as Washington County Broadcasting Company, Washington, Iowa, Docket No. 13309, File No. BP-12118; Requests: 1380 kc, 500 w, Day; E. D. Scandrett, Washington, Iowa, Docket No. 13310, File No. BP-12603; Requests: 1380 kc, 500 w, Day; Lloyd C. McKenney, tr/as Iola Broadcasting Company, Iola, Kans., Docket No. 13311, File No. BP-12785; Requests: 1370 kc, 500 w, DA-Day; Heart of America Broadcasters, Inc. (KUDL), Kansas City, Mo., Docket No. 13312, File No. BP-12879; Has: 1380 kc, 1 kw, Day, Requests: 1380 kc, 1 kw, 5 kw-LS, DA-2, U; Iowa City Broadcasters, Inc., Iowa City, Iowa, Docket No. 13313, File No. BP-13072; Requests: 1380 kc, 500 w, Day; Washington Home and Farm Radio, Inc., Washington, Iowa, Docket No. 13314, File No. BP-13159; Requests: 1380 kc, 500 w, Day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 16th day of December 1959.

The Commission having under consideration the above-captioned and described applications;

It appearing that except as indicated by the issues specified below, the instant applicants are legally, technically, financially, and otherwise qualified to construct and operate their instant proposals, except that BP-11932 and BP-12879 may not be financially qualified; and

It further appearing that, in an amendment filed on October 8, 1959, Station KUDL shows that a substantial amount of the cash necessary for construction and early operation of its instant proposal would be obtained from expected income of the station; but that, on the basis of the showing made by the applicant, we cannot find it financially qualified, since an additional \$27,024 appears necessary for the new venture.

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission in a letter dated September 22, 1959, and

incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant without hearing of the said applications; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing that, in response to the Commission letter of September 22, 1959, KUDL, by letter dated October 7, 1959, requested that it be granted a thirty-day extension of time so that it could prepare an engineering study; that the Commission, in a letter dated October 21, 1959, denied the request for the reason that a grant thereof would delay the processing of the KUDL and associated applications; and that the time requested has now expired and the essence of the request is therefore moot; and

It further appearing that, in response to the Commission letter of September 22, 1959, Iowa City Broadcasters, Inc., File No. BP-13072, requested a waiver of § 3.37 of the rules should it be found to be in contravention thereof; and

It further appearing that, after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from BP-11932, 12118, 12603, 12785, 13072, 13159 and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations WBEL (BP-12101) and KUDL (BP-12879) and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposal of BP-11932 would involve objectionable interference with Stations KBTO, Eldorado, Kansas; KGNO, Dodge City, Kansas; and KMUS, Muskogee, Oklahoma, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of BP-12785 would involve objectionable interference with Station KBTO, Eldorado, Kansas, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether the instant proposal of BP-12879 would involve objectionable interference with Stations KCIM, Carroll, Iowa, KMUS, Muskogee, Oklahoma, daytime; KWX, St. Louis, Missouri; WKJG, Fort Wayne, Indiana; and WITH, Port Huron, Michigan, nighttime, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

7. To determine whether the interference received by any one of the instant proposals of A. F. Misch (BP-11932), Washington County Broadcasting Company (BP-12118), E. D. Scandrett (BP-12603), Iola Broadcasting Company (BP-12785), Iowa City Broadcasters, Inc. (BP-13072), and Washington Home and Farm Radio, Inc. (BP-13159) from the other proposals herein and any existing stations would affect more than ten percent of the population within their respective normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

8. To determine whether BP-11932 and BP-12879 are financially qualified to construct and operate their proposed stations.

9. To determine whether the antenna system of BP-12879 can be made to operate as proposed.

10. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of BP-13072 and KHAK, Cedar Rapids, Iowa, in contravention of Section 3.37 of the Commission Rules.

11. To determine whether the instant proposal of BP-12879 would cause interference to Station CKPC, Brantford, Ontario, Canada, in contravention of the provisions of the North American Regional Broadcasting Agreement.

12. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, whether the proposal for Coffeyville, Kansas; Iola, Kansas; Kansas City, Missouri; Iowa City, Iowa; or one of the proposals for Washington, Iowa, would better provide a fair, efficient and equitable distribution of radio service.

13. To determine, in the event it is concluded pursuant to the foregoing issue that one of the proposals for Washington, Iowa, should be favored, which of the proposals of Washington County Broadcasting Company (BP-12118), E. E. Scandrett (BP-12603) or Washington Home and Farm Radio, Inc. (BP-13159), would better serve the public interest, convenience, and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the three applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed station.

(b) The proposals of each of the instant applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the instant applications.

14. To determine, in the light of the evidence adduced, pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That O. A. Tedrick, individually and as Trustee for the interests of W. B. Tedrick, deceased, Jack M. Tedrick, Jessie Marie Tedrick, William R. Tedrick and James P. Platt, d/b as El Dorado Broadcasting Company; Vincent Collison, Malford Collison, and Marion Collison, d/b as Carroll Broadcasting Company; The Dodge City Broadcasting Co., Inc.; Horace C. Boren; KWK Radio, Inc.; WKJG, Inc.; and The Times Herald Company, licensees of stations KBTO, KCIM, KGNO, KMUS, KWK, WKJG and WTTT, respectively, are made parties to the proceeding; and Laird Broadcasting Company, Inc., licensee of station KHAK, is made a party respondent herewith.

It is further ordered, That, if the proposal of BP-12879 is found to be in contravention of the provisions of the North American Regional Broadcasting Agreement, but is favored in the hearing, it will be held without final action pursuant to the provisions of § 1.352 of the Commission rules.

It is further ordered, That, in the event of a grant of the application of BP-12603, the construction permit shall contain a condition that the permittee shall submit sufficient measurement data to establish that the radiation has been reduced to essentially 124 mv/m/500w as proposed.

It is further ordered, That, in the event of a grant of the application of BP-13159, the construction permit shall contain a condition that the permittee shall submit sufficient measurement data to establish that the radiation is limited to 175 mv/m/kw as proposed.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable

assurance that the proposals set forth in the application will be effectuated.

It is further ordered, That, to avail themselves of the opportunity to be heard, the instant applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10948; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 12179; FCC 59-1258]

RADIO ST. CROIX, INC.

Memorandum Opinion and Order Amending Issues

In re applications of Radio St. Croix, Incorporated, New Richmond, Wis. et al., Docket No. 12179, File No. BP-10925 et al., for construction permits.

1. The Commission has before it for consideration (1) a petition to modify issues, filed August 11, 1959, by Grundy Broadcasting Company; (2) a statement in support of the petition, filed August 18, 1959, by Southern Wisconsin Company, Inc.; (3) an opposition to the petition, filed September 10, 1959, by the Commission's Broadcast Bureau; (4) an opposition to the petition, filed September 21, 1959, by Des Plaines-Arlington Broadcasting Company;¹ (5) an opposition to the petition, filed September 21, 1959, by Skokie Valley Broadcasting Company; and, (6) other matters of record herein.

2. Grundy Broadcasting Company (Grundy), Skokie Valley Broadcasting Company (Skokie Valley) and Des Plaines-Arlington Broadcasting Company (Des Plaines) have applied for construction permits for new standard broadcast stations in Morris, Evanston and Des Plaines, Illinois, respectively, and Rollins Broadcasting Company (Rollins) has applied to increase the power of station WBEE in Harvey, Illinois. These four applications, which are mutually exclusive, constitute part of a larger group of applications, all designated for hearing under the lead docket of Radio St. Croix, Incorporated. The applications for Harvey, Morris and Evanston were consolidated for hearing by Order released March 10, 1959 (FCC 59-194), and published in the FEDERAL REGISTER on March 14, 1959. The application for Des Plaines was consolidated with the others

¹By an Order released September 1, 1959 (FCC 59M-1096), the Commission extended the time for filing responses to the instant petition to September 21, 1959.

by Order released June 19, 1959 (FCC 59-583), and published in the FEDERAL REGISTER on June 25, 1959. Included among the existing issues are a standard 307(b) issue and a standard comparative issue.²

3. Petitioner requests that the Commission supplement present Issue 22, which does not specifically designate which applications are to be given comparative consideration, by adding a comparative issue which would apply specifically to the applications of Rollins, Skokie Valley and Des Plaines. At the outset, we must consider the application of Section 1.141 of the Commission's rules, which requires that petitions to modify the issues must be filed not later than 15 days after publication of the issues in the FEDERAL REGISTER, unless good cause is shown for the delay. The instant petition was filed beyond the 15-day period specified by our rule, and the petitioner has made no showing of good cause sufficient to warrant late filing. The petition will therefore be denied as untimely.

4. Further consideration must, however, be given to the questions raised by the instant pleadings. In essence, the problem stems from the fact that the communities here involved are located near the city of Chicago and that the proposals would, to some extent, serve the same areas and populations. Thus, there arises the question of whether these communities should be treated for 307(b) purposes as separate and distinct communities. Petitioner would have us determine that these communities cannot be treated as separate for 307(b) purposes, and that since a choice cannot be made on the basis of 307(b) comparative considerations are therefore essential. Those who oppose the petition would have us determine that these communities must be considered as separate and distinct and that a choice can be made solely on the basis of 307(b), thus rendering a comparative evaluation unnecessary. Upon the basis of the facts alleged, inquiry into the community status of the several towns is justified. To permit such determination, the issue

²These issues are:

21. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the operations proposed in the above-captioned applications would best provide a fair, efficient and equitable distribution of radio service.

22. To determine on a comparative basis which of the competing applicants, if any, for the community or communities selected as having the greater need pursuant to section 307(b) would better serve the public interest, convenience and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the said applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed standard broadcast station.

(b) The proposal of each with respect to the management and operation of the proposed station.

(c) The programming services proposed in each of the said applications.

set forth below is added to these proceedings.²

Accordingly, it is ordered, This 16th day of December 1959, That the Petition to Modify Issues, filed August 11, 1959, by Grundy Broadcasting Company is denied: It is further ordered, By the Commission on its own motion, that the issues in this proceeding, as designated in the Order released June 19, 1959, are revised to read as follows: Present Issues, 21 22 and 23 are renumbered as 22, 23 and 24, respectively; and the following is added as a new Issue 21:

21. In the light of their location and urban and industrial characteristics, and other relevant factors,

(a) to determine whether Harvey, Evanston, Des Plaines and Morris, Illinois, or any of them, may be considered as separate communities for the purposes of section 307(b) of the Communications Act of 1934, as amended; and,

(b) should it be found that one or more of them may not be so considered, to determine the community in which each of the latter is to be included for section 307(b) purposes.

Released: December 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10949; FHed, Dec. 23, 1959;
8:49 a.m.]

[Docket No. 12600 etc.; FCC 59-1268]

SHELBY COUNTY BROADCASTING CO. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of H. T. Parrott, R. D. Ingram, J. W. Pickett & Edwin L. Rogers d/b as Shelby County Broadcasting Company, Shelbyville, Ind., Docket No. 12600, File No. BP-11202; Requests: 1520 kc, 250 w, DA-1, U; General Communications, Incorporated, Lafayette, La., Docket No. 13305, File No. BP-12244; Requests: 1520 kc, 500 w, DA-1, U; Storz Broadcasting Co. (KOMA), Oklahoma City, Okla., Docket No. 13306, File No. BP-12833; Has: 1520 kc, 50 kw, DA-N, U, Requests: 1520 kc, 50 kw, DA-N, U (Change in nighttime pattern); for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 16th day of December 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing that except as indicated by the issues specified below, the instant

applicants are legally, technically, financially, and otherwise qualified to construct and operate their instant proposals; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in letters dated October 2 and January 26, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that copies of the aforementioned letters are available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues as hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from BP-11202 and BP-12244 and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station KOMA and the availability of other primary service to such areas and populations.

3. To determine the areas and populations which may be expected to gain or lose secondary service from the proposed operation of Station KOMA and the availability of other secondary service to such areas and populations.

4. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

5. To determine whether nighttime interference received from the proposal of KOMA (BP-12833), Oklahoma City, Oklahoma, would affect more than ten percent of the population within the normally protected primary service area

of the instant proposal of BP-12244, in contravention of § 3.23(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said Section.

6. To determine whether the antenna system proposed by BP-11202 would constitute a hazard to air navigation.

7. To determine whether the instant proposal of BP-12833 would involve nighttime interference with Station CMBD, Havana, Cuba, in contravention of the provisions of the North American Regional Broadcasting Agreement.

8. To determine whether the instant proposal of BP-12833 would involve nighttime interference with Station XEEX, Tehuacan, Pueblo, Mexico, and Station XETH, Huamantla, Tabasco, Mexico, in contravention of the provisions of the U.S./Mexican Agreement, 1957.

9. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

10. To determine, in the light of the evidence adduced, pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That, if the proposal of BP-12833 is found to be in contravention of the provisions of the U.S./Mexican Agreement, 1957, but is favored in the hearing proceeding, it will be held without final action pursuant to the provisions of § 1.352 of the Commission rules.

It is further ordered, That, if the proposal of BP-12833 is found to be in contravention of the provisions of the North American Regional Broadcasting Agreement, but is favored in the hearing, it will be held without final action pursuant to the provisions of § 1.352 of the Commission rules.

It is further ordered, That, to avail themselves of the opportunity to be heard, the instant applicants, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10950; Filed, Dec. 23, 1959;
8:49 a.m.]

²If it should be determined that a choice among these applications cannot be made on the basis of 307(b) and that comparative data is necessary, such evidence could then be introduced under the existing standard comparative issue, which, when renumbered, will be Issue 23.

[Docket No. 13272; FCC 59M-1733]

ULSTER COUNTY BROADCASTING CO.

Order Continuing Hearing

In re application of Saul Dresner, Alfred Dresner, Samuel Dresner, and Rose Dresner, d/b as Ulster County Broadcasting Company, Ellenville, N.Y., Docket No. 13272, File No. BP-11781; for construction permit.

The Hearing Examiner having under consideration petition for continuance filed by Ulster County Broadcasting Company, requesting indefinite continuance of the prehearing conference and hearing herein, pending consideration by the Commission of a petition for reconsideration of order of designation to be filed by petitioner;

It appearing that counsel for the Commission's Broadcast Bureau has consented to a grant of the petition and that there are no other parties to the proceeding;

It is ordered, This 17th day of December 1959, that the above petition is granted; and the prehearing conference and hearing, now scheduled for December 18, 1959 and January 28, 1960, respectively, are continued without date.

Released: December 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10951; Filed, Dec. 23, 1959;
8:49 a.m.]

main studios outside of Louisville, and has shown good cause for the requested waiver; and

It further appearing that Kentuckiana Television, Incorporated will not place a minimum field intensity of 80 dbu over all of Louisville as required by § 3.685(a) of the rules and has requested a waiver thereof; and that Kentuckiana Television, Incorporated has made a showing sufficient to warrant the addition of an issue with respect to whether a waiver of § 3.685(a) would serve the public interest; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, Kentuckiana Television, Incorporated and United Electronics Laboratories, Inc., were advised by letters that their applications were mutually exclusive, of the necessity for a hearing and were advised of all objections to their applications and were given an opportunity to reply; and

It further appearing that upon due consideration of the above-captioned applications, the amendments thereto, and the replies to the above letters, the Commission finds that pursuant to section 309(b) of the Communications Act of 1934, as amended, a hearing is necessary; that United Electronics Laboratories, Inc. is legally and technically qualified to construct, own and operate the proposed television broadcast station; and that Kentuckiana Television, Incorporated is legally qualified to construct, own and operate the proposed television broadcast station and is technically so qualified except as to issue "1" below.

It is ordered, That pursuant to section 309(b) of the Communications Act of 1934, as amended, the above-captioned applications of Kentuckiana Television, Incorporated and United Electronics Laboratories, Inc., are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine the type of modification proposed by Kentuckiana Television, Inc. for the specified antenna for operation on Channel 51, and to determine the resulting RMS gains in the horizontal plane and major radiation lobe.

(2) To determine whether Kentuckiana Television, Inc. and United Electronics, Incorporated are financially qualified to construct, own and operate the proposed television broadcast stations.

(3) To determine whether a grant of the request of Kentuckiana Television, Incorporated for a waiver of § 3.685(a) of the rules would serve the public interest, convenience and necessity.

(4) To determine on a comparative basis which of the operations proposed in the above-captioned applications would better serve the public interest, convenience and necessity in light of the significant differences between the applicants as to:

(a) The background and experience of each, bearing on its ability to own and operate the proposed television broadcast station.

(b) The proposals of each with respect to management and operation of the proposed television broadcast stations.

(c) The programing service proposed in each of the above-captioned applications.

(5) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner on his own motion or on petition properly filed by a party to the proceeding and upon a sufficient allegation of facts in support thereof, by the addition of the following issue: To determine whether the funds available to the applicants will give reasonable assurance that the proposals set forth in the applications will be effectuated.

It is further ordered, That to avail themselves of the opportunity to be heard, Kentuckiana Television, Incorporated and United Electronics, Inc., pursuant to § 1.140(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: December 21, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-10952; Filed, Dec. 23, 1959;
8:49 a.m.]

[Docket Nos. 13318, 13319; FCC 59-1273]

UNITED ELECTRONICS LABORATORIES, INC. AND KENTUCKIANA TELEVISION, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: United Electronics Laboratories, Inc., Louisville, Ky., Docket No. 13318, File No. BPCT-2640; Kentuckiana Television, Incorporated, Louisville, Ky., Docket No. 13319, File No. BPCT-2652; for construction permits for new television broadcast stations.

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 16th day of December 1959;

The Commission having under consideration the above-captioned applications, each requesting a construction permit for a new television broadcast station to operate on Channel 51, assigned to Louisville, Kentucky; and

It appearing that the applications of Kentuckiana Television, Incorporated and United Electronics Laboratories, Inc. are mutually exclusive in that operation by both applicants as proposed would result in mutually destructive interference; and

It further appearing that United Electronics, Inc. has requested a waiver of § 3.613(a) of the rules to locate its

FEDERAL POWER COMMISSION

[Docket Nos. G-18339, G-18342]

FOREST OIL CORP., ET AL.

Notice of Applications and Date of Hearing

DECEMBER 17, 1959.

Take notice that Forest Oil Corporation, Operator, et al. (Applicant) filed applications in the above-entitled matters pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon the sale of natural gas to United Fuel Gas Company (United) as hereinafter described subject to the jurisdiction of the Commission, all as more fully represented in the respective applications which are on file with the Commission, and open to public inspection.

In Docket No. G-18339, Applicant seeks permission and approval to abandon service to United from its Higginbotham Unit No. 1 Well in the North Maxie Field, Acadia, Louisiana, covered by a gas sales contract dated July 10, 1956, between Applicant and United.

In Docket No. G-18342, Applicant seeks permission and approval to abandon service to United from its No. 2 E. C. Daigle Well in the Ellis-North Field, Acadia Parish, Louisiana, covered by a

gas sales contract dated February 12, 1957, between Applicant and United.

In support of the proposed abandonment of service, from the Higginbotham Unit No. 1 Well, Applicant states that the available gas supply is depleted to the extent that continuance of service is unwarranted.

In support of its proposal to abandon service from the No. 2 E. C. Daigle Well, Applicant states that production from the Bathysiphon Zone in said well ceased and that the well has been plugged and abandoned.

Applicant was authorized on June 3, 1957, and on March 3, 1958, in Docket Nos. G-9000 and G-6937, to render service to United from the Higginbotham and E. C. Daigle Wells, 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 January 26, 1960, at 9:30 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: *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 January 14, 1960. 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.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10913; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket No. E-6911]

NEW YORK STATE ELECTRIC & GAS CORP.

Order To Show Cause

DECEMBER 16, 1959.

The 1958 Annual Report (F.P.C. Form No. 1) of New York State Electric & Gas Corporation (New York Electric), a New York corporation with its principal business office in Ithaca, New York, indicates that New York Electric for general corporate and public reporting purposes is currently accounting for certain credits arising from its use of deferred tax ac-

counting in a manner contrary to the requirements of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

New York Electric is a public utility within the meaning of that term as used in the Federal Power Act, and is subject to the Commission's jurisdiction.

New York Electric's Annual Report to the Commission for 1958 shows a credit amount of \$8,048,000 in Account 266—Accumulated Deferred Taxes on Income, as of December 31, 1958. This amount represents the accumulation to December 31, 1958, of annual accruals of deferred taxes resulting from New York Electric's taking of accelerated amortization authorized under Certificates of Necessity prescribed under section 168 of the Internal Revenue Code. New York Electric's annual charges to income for the Federal income taxes thus deferred have been charged to Account 507 A—Provision for Deferred Taxes on Income. These two accounts constitute the balance sheet and income accounts, respectively, prescribed by this Commission's Order No. 204 (19 FPC 837) as the appropriate accounting classifications for Federal income taxes deferred by reason of accelerated amortization and liberalized depreciation practices under sections 168¹ and 167, respectively, of the Internal Revenue Code of 1954.

Although it utilized the aforementioned applicable accounting classifications in its annual report to the Commission, New York Electric's annual report to its stockholders for the year 1958 shows that New York Electric is currently reporting, for general corporate purposes, the accumulated accruals of deferred taxes on income that the Commission has required to be set forth in Account 266 through another balance sheet account, Earned Surplus, with the notation "Reserved for Future Federal Income Taxes".² The accumulated deferrals of \$8,048,000 represent approximately 21 percent of New York Electric's total earned surplus as of December 31, 1958. New York Electric's annual report to its stockholders is required to be appended as a part of its FPC Form No. 1, Annual Report to the Commission.

Correspondence between New York Electric representatives and this Commission's staff has failed to show any justification for New York Electric's departure from the requirements of this Commission's Uniform System of Accounts. Moreover, New York Electric representatives have indicated that the company intends, in published financial statements, to (1) continue the above-mentioned accounting practices, showing deferred tax accruals in a restricted subaccount of Account 271 (Earned Surplus), with such explanatory notes as it may deem appropriate; and (2) commencing January 1, 1959, to make annual provision for deferred Federal income taxes by charges to Account 538, Miscellaneous Income Deductions.

¹ Formerly section 124A of the Federal Internal Revenue Act of 1950.

² Order No. 204 (19 FPC 837) finds that surplus, even though restricted, is not an appropriate account for the classification of deferred taxes on income.

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act (particularly sections 301(a), 304 and 309 thereof), that New York Electric show cause, if any there be, for its past and continuing departure from the requirements of this Commission's Uniform System of Accounts; all in the manner as hereinafter provided.

The Commission orders: New York Electric shall show cause, if any there be, in writing and within sixty days from the issuance of this order, why the Commission should not find and determine:

(1) That New York Electric is reporting or proposes to report the financial data required to be set forth in Accounts 507-A and 266, otherwise than through the Commission's prescribed Accounts, all as indicated above and therefore that it has violated and will hereafter continue to violate the accounting and reporting requirements prescribed by the Commission through its Uniform System of Accounts;

(2) That this action by New York Electric constitutes a willful and knowing violation of the Federal Power Act;

(3) That New York Electric be required to make, keep, and preserve its accounts in the manner prescribed by this Commission in the Uniform System of Accounts for Public Utilities and Licensees;

(4) That New York Electric be ordered to file such substitute pages of its Annual Report for 1958 (F.P.C. Form No. 1), to make the reporting of accumulated deferred taxes on income therein consistent, and in compliance with the requirements for such report as prescribed by the Commission.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10914; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket Nos. G-4063 etc.]

PAN AMERICAN PETROLEUM CORP. Order Reopening Proceedings, and Severing and Continuing Dockets

DECEMBER 16, 1959.

On June 19, 1959, the Commission issued its order in Docket Nos. G-4063, et al., adopting the initial decision of the Presiding Examiner which issued certificates of public convenience and necessity to Pan American Petroleum Corporation (Pan American) in 33 dockets authorizing sales of natural gas to various purchasers as applied for therein. Rehearing of said order of June 19, 1959, was denied by the Commission by order issued on August 10, 1959.

On November 9, 1959, Pan American filed its motion to sever from the foregoing consolidated proceeding Docket Nos. G-7494, G-7499 and G-7506 involving sales of gas to C. V. Lyman in Winkler County, Texas, stating that new contracts between Pan American and Lyman have been entered into, altering the circumstances as to these three dockets

under which the order of June 19, 1959, was issued.

It appears that a petition to review the order of June 19, 1959, is pending before the Court of Appeals for the District of Columbia but that the transcript of the record before the Commission has not yet been filed. Accordingly, pursuant to section 19(b) of the Natural Gas Act, the Commission may entertain this motion to sever Docket Nos. G-7494, G-7499 and G-7506.

The Commission finds:

(1) It is appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the consolidated proceeding, in the Matter of Pan American Petroleum Corporation, Docket Nos. G-4063, et al., be reopened for the sole purpose of severing therefrom the three dockets designated as Docket Nos. G-7494, G-7499 and G-7506.

(2) Said Docket Nos. G-7494, G-7499 and G-7506 should be continued for further action by the Commission under Section 7 of the Natural Gas Act.

The Commission orders:

(A) The consolidated proceeding, in the Matter of Pan American Petroleum Corporation, Docket Nos. G-4063, et al., be and the same is hereby reopened for the sole purpose of severing therefrom the three dockets designated as Docket Nos. G-7494, G-7499 and G-7506.

(B) Said Docket Nos. G-7494, G-7499 and G-7506 be and the same are hereby severed from the consolidated proceeding in Docket Nos. G-4063, et al., and continued for further action by the Commission under section 7 of the Natural Gas Act.

(C) In all other respects the said consolidated proceeding, Docket Nos. G-4063, et al., shall remain closed and the orders of the Commission issued on June 19, 1959, and on August 10, 1959, therein shall remain in full force and effect.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10915; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket No. G-20352]

PHILLIPS PETROLEUM CO.

Order Providing for Hearing and Suspending Proposed Change in Rate

DECEMBER 16, 1959.

On November 16, 1959, Phillips Petroleum Company (Phillips) tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increase in rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated November 12, 1959.

Purchaser and producing area: United Gas Pipe Line Company, Lewisburg Field., Acadia Parish, La.

Rate schedule designation: Supplement No. 8 to Phillips' FPC Gas Rate Schedule No. 216.

Effective date unless suspended: December 17, 1959 (effective date is the first day after the expiration of 30 days' notice).

Rate in effect: 7.198 cents per Mcf.

Proposed increased rate: 20.811 cents per Mcf.

Phillips has filed an application to abandon the service under the rate schedule involved herein. That application is now pending in Docket No. G-18533. In support of its proposed increased rate, Phillips states that it has a right to abandon the service and would now be selling the gas to another purchaser at the proposed rate if abandonment has been permitted. Phillips further states that the proposal will do no more than increase a very low rate to one comparable to what other producers are receiving in Lewisburg Field.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: 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 a hearing concerning the lawfulness of the proposed changes and that Supplement No. 8 to Phillips' FPC Gas Rate Schedule No. 216 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) 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), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 8 to Phillips' FPC Gas Rate Schedule No. 216.

(B) Pending such hearing and decision thereon, the supplement is hereby suspended and the use thereof deferred until May 17, 1960, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) 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 (Commissioner Kline dissenting).

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10916; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket Nos. G-17974, 17975]

RICHOME OIL CO. AND A. E. HERRMANN CORP.

Notice of Applications and Date of Hearing

DECEMBER 17, 1959.

In the matters of Richome Oil Company, Docket No. G-17974; A. E. Herrmann Corporation, Docket No. G-17975.

Take notice that Richome Oil Company (Richome), a partnership composed of J. B. Herrmann and R. P. Herrmann, in Docket No. G-17974 and A. E. Herrmann Corporation (Herrmann), in Docket No. G-17975, filed applications on May 3, 1959, pursuant to section 7 of the Natural Gas Act, authorizing certain acts as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications which are on file with the Commission and open for public inspection.

The applications seek authority for:

(1) Herrmann, in Docket No. G-17975, to abandon service to Colorado Interstate Gas Company (Colorado) from the Holtorf and McLaughlin leases located in the West Panhandle Field, Moore County, Texas, covered by a contract dated November 19, 1952, as amended, between Herrmann, Ruel Smith & J. S. McLaughlin, as sellers, and Colorado, as buyer.

(2) Richome in Docket No. G-17974 to continue the service proposed to be abandoned by Herrmann herein.

The applications state that by instrument of assignment dated September 14, 1956, Herrmann conveyed to Richome its interest in the subject leases covered by the above-mentioned contract and that Richome proposes to continue service to Colorado under said contract.

Herrmann was authorized in Docket No. G-3189 to render the service now proposed to be abandoned by the Commission's order issued December 31, 1954 in the Matters of A. E. Herrmann Corporation, Docket Nos. G-3189, et al.

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 January 26, 1960, 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 January 14, 1960. 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.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10917; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket No. G-19511]

SUNRAY MID-CONTINENT OIL CO.

Notice of Application and Date of Hearing

DECEMBER 17, 1959.

Sunray Mid-Continent Oil Company (Applicant) filed an application on September 21, 1959, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the sale of natural gas in interstate commerce as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas in interstate commerce to South Texas Natural Gas Gathering Company (South Texas) for resale from production in the North Monte Christo field, Hidalgo County, Texas, under a gas sales contract dated July 1, 1959.

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 January 26, 1960, 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 January 14, 1960. 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.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10918; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket No. G-19203]

SUPERIOR OIL CO.

Notice of Application and Date of Hearing

DECEMBER 17, 1959.

Take notice that The Superior Oil Company (Applicant) filed an application on August 10, 1959, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open to public inspection.

Applicant seeks permission and approval to abandon the sale of natural gas to Tennessee Gas Transmission Company (Tennessee) from acreage in the Herrera Field, Nueces County, Texas, covered by a gas sales contract dated April 5, 1956, between Applicant as seller, and Tennessee, as buyer. Applicant was authorized to render the subject service by order of the Commission issued March 13, 1957, in Docket No. G-10526.

In support of the proposed abandonment of service, Applicant states that all leases have ceased to produce in paying quantities and have been released. By letter agreement dated July 23, 1959, Tennessee agreed to the cancellation of the above-mentioned contract.

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 January 26, 1960, 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 January 14, 1960. 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.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10919; Filed, Dec. 23, 1959;
8:45 a.m.]

[Docket No. E-6917]

PUGET SOUND POWER & LIGHT CO.

Notice of Application

DECEMBER 18, 1959.

Take notice that on December 14, 1959, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Puget Sound Power & Light Company ("Applicant"), a corporation organized and existing under the laws of the State of Massachusetts and doing business in the State of Washington, with its principal business office at Seattle, Washington, seeking an order authorizing the issuance of not to exceed \$25,000,000 principal amount outstanding at any one time of unsecured promissory notes payable July 30, 1961 to the banks named below under a credit agreement dated December 1, 1959 as follows:

Name of Bank	Participation
Seattle-First National Bank	\$2,500,000
The National Bank of Commerce of Seattle	1,800,000
The Bank of California, N.A.	700,000
The Pacific National Bank of Seattle	700,000
Peoples National Bank of Washington in Seattle	700,000
The Canadian Bank of Commerce	250,000
Seattle Trust and Savings Bank	200,000
The Puget Sound National Bank of Tacoma	200,000
The Bellingham National Bank	100,000
Continental Illinois National Bank and Trust Company of Chicago	5,750,000
Harris Trust and Savings Bank	2,400,000
The First National Bank of Boston	1,250,000
The Marine Midland Trust Company of New York	2,000,000
The Hanover Bank	1,800,000
Irving Trust Company	1,250,000
Chemical Bank New York Trust Company	1,200,000
Bankers Trust Company	1,200,000
Morgan Guaranty Trust Company of New York	1,000,000
Total	25,000,000

Applicant states that the interest rate of the proposed borrowings will be determined at the time each loan is made and will be the New York City prime rate for commercial bank loans which rate on December 1, 1959 was 5 percent. According to the application the proceeds of the Notes will be used to the extent necessary to pay the balance of the Notes outstanding under the credit agreement dated September 8, 1959, and the balance will be used to reimburse Applicant's treasury to the extent such proceeds are sufficient for actual expenditures for construction, completion,

extension and improvement of Applicant's facilities directly or indirectly.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 6th day of January 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-10934; Filed, Dec. 23, 1959;
8:48 a.m.]

[Docket No. G-17930]

THE PURE OIL CO.

Order Fixing Oral Argument

DECEMBER 18, 1959.

On January 30, 1959, The Pure Oil Company (Pure) tendered for filing, proposed changes in certain of its then effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission, thereby proposing increases in rates and charges. Favored-nation provisions in Pure's FPC Gas Rate Schedules No. 1, 3 and 28, relating to contracts for the sale of gas to El Paso Natural Gas Company (El Paso) and the relation of said provisions to sales of gas beginning on December 26, 1953, by West Texas Gathering Company (West Texas) to El Paso, constituted Pure's support for its proposed increases in rates and charges.

Among other orders issued herein, the Commission ordered: (1) The proposed increases suspended and made subject to public hearing by order issued on February 27, 1959; (2) designated issues to be heard and fixed the date of hearing by order issued on March 27, 1959; (3) amended the foregoing order by designation of additional issue to be heard by order issued on May 12, 1959; and (4) severed issues for decision by order issued on July 17, 1959.

The first issues designated for public hearing herein are, in effect, whether the sale of gas by West Texas to El Paso activated the favored-nation provisions of Pure's above-identified rate schedules, as said issues are set forth in order issued herein on March 27, 1959.

The second issue is whether Pure's favored-nation provisions contained in its above-identified rate schedules are void or voidable as contrary to public interest, as said issue is set forth in order issued herein on May 12, 1959.

On July 23, 1959, approximately 22 days of hearing sessions for the presentation of evidence terminated. One day of oral argument before the Presiding Examiner followed. Thereafter on November 16, 1959, the Presiding Examiner issued his decision on the first issues as designated in order issued herein on March 27, 1959, and found that Pure's favored-nation clauses had not been activated.

The Commission finds: It is appropriate and in the public interest that the parties be given opportunity to present oral argument before the Commission respecting the two issues designated for public hearing by our orders of March 27, and May 12, 1959, in this proceeding.

The Commission orders:

(A) Oral argument shall be held before the Commission at 10:00 a.m., e.s.t., on January 28, 1960, in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the issues involved in this proceeding as designated by orders issued herein on March 27, and May 12, 1959.

(B) Any party to this proceeding desiring to participate in the oral argument shall advise the Secretary of the Commission on or before January 14, 1960 to that effect and shall state the amount of time they wish to have allotted to them for argument. Parties having similar interests are urged to select one spokesman to argue their contentions and thus prevent repetitious arguments.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 59-10935; Filed, Dec. 23, 1959;
8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3865]

SKIATRON ELECTRONICS AND TELEVISION CORP.

Order Summarily Suspending Trading

The common stock, par value 10 cents per share of Skiatron Electronics and Television Corporation, being listed and registered on the American Stock Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934 that trading in said security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective

for a period of ten (10) days from December 18, 1959 to December 27, 1959, inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 59-10928; Filed, Dec. 23, 1959;
8:47 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

LEONARD FRANK

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

Leonard Frank, Munich, Germany; \$12,000 in the Treasury of the United States.

Vesting Order No. 500A-179; Claim No. 44776.

Executed at Washington, D.C., on December 17, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-10929; Filed, Dec. 23, 1959;
8:47 a.m.]

[Vesting Order SA-276]

HUNGARIAN GENERAL CREDIT BANK

In re: Property indirectly owned by Hungarian General Creditbank, also known as Ungarische Allgemeine Creditbank, as Magyar Altalanos Hitelbank, and as Banque Generale de Credit Hongrois, Budapest, Hungary; F-34-1703, F-34-228.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows:

That certain debt or other obligation of White, Weld & Co., 20 Broad Street, New York 5, New York in the sum of \$24,719.36, arising out of a blocked account maintained by said company in the name of "Hollandsche Bank-Unie N. V. Miles A. G. (Meag A. G.) Blocked Account", together with any and all rights to demand, enforce and collect the same,

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was owned indirectly by Hungarian General Creditbank, also known as Ungarische Allgemeine Creditbank, as Magyar Altalanos Hitelbank, and as Banque Generale de Credit Hongrois, Budapest, Hungary, a national of Hungary as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on December 17, 1959.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 59-10930; Filed, Dec. 23, 1959;
8:47 a.m.]

[Vesting Order SA-277]

**BUDAPESTER HAUPTSTADTISCHE
GEMEINDE SPARKASSE A.G.**

In re: Property indirectly owned by Budapest Hauptstadtische Gemeinde Sparkasse A.G., also known as City of Budapest Municipal Savingsbank Company Limited, Budapest, Hungary; F-34-1147.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows:

That certain debt or other obligation of The Chase Manhattan Bank, 18 Pine Street, New York 15, New York, in the sum of \$145.25 arising out of a blocked account maintained by said bank in the name of "Amsterdamsche Bank N.V., Amsterdam blocked account, subaccount Budapest Hauptstadtische Gemeinde Sparkasse A.G., Budapest" together with any and all rights to demand, enforce and collect the same,

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was indirectly owned by Budapest Hauptstadtische Gemeinde Sparkasse A.G., also known as City of Budapest Municipal Savingsbank Company Lim-

ited, Budapest, Hungary, a national of Hungary, as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on December 17, 1959.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General, Director,
Office of Alien Property.

[F.R. Doc. 59-10931; Filed, Dec. 23, 1959;
8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during December. Proposed rules, as opposed to final actions, are identified as such.

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