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[Navel Orange Reg. 237]

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

Limitation of Handling

§ 907.537 Navel Orange Regulation 237.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 2, 1971.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period November 5, 1971, through November 11, 1971, are hereby fixed as follows:

(i) District 1: 114,204 cartons;

(ii) District 2: Unlimited;

(iii) District 3: 113,501 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: November 3, 1971.

FRED DUNN,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16244 Filed 11-3-71;11:43 am]

[Valencia Orange Reg. 373]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.673 Valencia Orange Regulation 373.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908, 35 F.R. 16625), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 2, 1971.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period November 5, through November 11, 1971, are hereby fixed as follows:

(i) District 1: 85,000 cartons;

(ii) District 2: 415,000 cartons;

(iii) District 3: Unlimited.

(2) As used in this section, "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: November 3, 1971.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16242 Filed 11-3-71;11:42 am]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. Sections 1.109–2, 1.113–2, 1.201–2, and 1.201–14 are amended; § 1.201–22 is revised; §§ 1.201–33 and 1.201–34 are added; §§ 1.307–1 and 1.307–3 are amended; § 1.319(f) is revoked; § 1.320 is revised; § 1.322–1(a) is amended; § 1.322–2(j)(1) is revised; in § 1.322–6 paragraph (a) is amended and paragraph (c) is revised; § 1.322–9 is added; § 1.327 is revised; § 1.330 is added; § 1.406 (c)(51) is revised; § 1.701–1 is revised; in § 1.701–4 the introductory statement is amended and a new classification code "1929" is added under Major Group 19—Ordnance and Accessories; § 1.704–2(b) is amended; §§ 1.704–3(a)(1) and (3), and 1.705–5 are revised; § 1.908–1 is amended; § 1.908–2 is revised; § 1.908–3 (a) is amended; and § 1.908–6 is revised by deleting all after the first sentence, as follows:

§ 1.109–2 Deviations affecting one contract or transaction.

Deviations from this subchapter or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures: *Provided*, (a) Special circumstances justify a deviation and (b) written notice of such deviation is furnished to the Assistant Secretary of Defense (Installations and Logistics); and in the case of the Department of the Army, to the Assistant Secretary of the Army (I&L), Attn: ASPR Policy Member; the Department of the Navy, the Chief of Naval Material, Attn: Code MAT02G; Department of the Air Force, Director of Procurement Policy, DCS/S&L, Attn: AFSPPC; and the Defense Supply Agency, Executive Director, Procurement and Production, Attn: DSAH-PM. Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

§ 1.113–2 Organizational conflicts of interest.

(a) Part 141 of this chapter—Rules for the Avoidance of Organizational Conflicts of Interest sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, Part 141 of this chapter describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, Part 141 of this chapter cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of Part 141 of this chapter. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in Part 141 of this chapter to contracts under his cognizance and shall determine whether each proposed procurement is subject to Part 141 of this chapter.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. A standard form of solicitation notice or clause is not prescribed in this subchapter since such notices and clauses must be especially adapted to apply the principle of the rules to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of Part 141 of this chapter (§ 141.2(b)(1)) is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 of Part 141 of this chapter (§ 141.2(b)(2) and (3)). In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) After approval by the Head of the Procuring Activity or his designee and before issuance of the solicitation, the contracting officer shall include the determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of Part 141 of this chapter are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to § 1.113–2 defer the determination of the application of Part 141 of this chapter to a time after the contract has been awarded.

(5) Where a contract contemplates a Rule 4 situation (§ 141.2(b)(4)), it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 (§ 141.2(b)(4)) is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under Part 141 of this chapter in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain, in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this section.

§ 1.201–2 Contract modification.

Contract modification means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (a) bilateral actions such as supplemental agreements, and (b) unilateral actions such as change orders, orders for provisioned items, administrative changes, notices of termination, and notices of the exercise of a contract option.

§ 1.201–14 Procuring activity.

Procuring activity includes for the Army: Directorate of Requirements and Procurement, Headquarters, U.S. Army Materiel Command; the U.S. Army Munitions Command; the U.S. Army Missile Command; the U.S. Army Electronics Command; the U.S. Army Mobility Equipment Command; the U.S. Army Tank-Automotive Command; the U.S. Army Aviation Systems Command; the U.S. Army Weapons Command; the U.S. Army Test and Evaluation Command; U.S. Continental Army Command and its subordinate commands consisting of Zone of Interior Armies and Military District of Washington, U.S. Army; U.S. Army, Alaska; U.S. Forces Southern Command, U.S. Army; U.S. Theater Army Support Command, Europe; U.S. Army, Pacific; National Guard Bureau; Office of the Chief of Engineers; Strategic Communications Command; Office of the Chief of Support Services; Office of The Surgeon General; U.S. Army Security Agency; Military Traffic Management

and Terminal Service; and the Safeguard System Organization; for the Navy: each Bureau, the Headquarters, Naval Material Command, the Office of the Deputy Chief of Naval Material (Procurement and Production), the Naval Air Systems Command, the Naval Electronic System Command, the Naval Facilities Engineering Command, the Naval Ordinance Systems Command, the Naval Ship Systems Command, the Naval Supply Systems Command, the Office of Naval Research, the Navy Aviation Supply Office, the Military Sealift Command, and the United States Marine Corps; for the Air Force: Hq., USAF (AFSPP); the Air Force Logistics Command; the Air Force Systems Command; the Strategic Air Command; the Tactical Air Command; the Aerospace Defense Command; the Military Airlift Command; the Air Training Command; the Pacific Air Forces, the U.S. Air Forces in Europe; the Alaskan Air Command; for the Defense Supply Agency: the Office of the Deputy Director for Contract Administration Services; the Office of the Executive Director, Procurement and Production; the Defense Supply Centers; and the Defense Personnel Support Center; for the Defense Communications Agency: The Headquarters, Defense Communications Agency; and the Defense Commercial Communications Office; for the Defense Atomic Support Agency: Headquarters, Defense Atomic Support Agency. It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

§ 1.201–22 Classified procurement.

Classified procurement is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see § 1.320.

§ 1.201–33 Exhibit.

Exhibit means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument schedule, which identifies deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule.

§ 1.201–34 Classified contract.

Classified contract is any contract that requires or will require access to classified information by the contractor or his employees in the performance of the contract. A contract may be a classified contract even though the contract document is not classified.

§ 1.307–1 General.

In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, it is national policy to require contractors to use ratings and allotment authority to support military procurement, to the extent required by the Bureau of Domestic Commerce (BDC).

(a) *DOD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations published by the Bureau of Domestic Commerce, with respect to which the Department of Defense is delegated administrative responsibility, will be published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4410.1. Authorized deviations to the priorities and allocations rules and regulations will likewise be published in the Manual.

(b) *Operating responsibility.* In accordance with § 1.403, the Military Departments shall comply with the priorities and allocations program, including the Defense Materials System, as set forth in the Priorities and Allocations Manual and in the rules and regulations published by the Bureau of Domestic Commerce.

§ 1.307–3 Inadequate response to solicitations.

(a) In accordance with the policies and procedures of the Priorities and Allocations System rated contracts and purchase orders or Authorized Controlled Material Orders may be placed on selected suppliers when adequate response to a solicitation is not received. Therefore, when there are no bids or proposals received as a result of a solicitation or if the bids or proposals received do not cover the entire requirement, normal procurement procedures shall be followed in attempting to locate sources, to the extent exigencies of the procurement will permit. If such efforts are unsuccessful, and it is determined at this point in time that the procurement must be accomplished, then rated orders in the form of rated contracts, rated purchase orders or an Authorized Controlled Material Order shall be presented, to one or more (as appropriate) selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by a cover letter signed by the contracting officer, citing the requirements of the Defense Production Act and BDC Regulation 2, and requesting timely acceptance thereof by the contractor. The letter shall also request that any reasons for rejection be promptly furnished in writing, as required by the BDC Regulations. Rated orders will be placed pursuant to appropriate negotiation authority. Contracts and purchase orders shall contain, as a minimum, the following information in addition to normal contractual requirements to be a valid rated order:

(1) DO or DX rating on contracts or purchase orders as appropriate.

(2) DMS allotment number or Authorized Controlled Material Orders.

(3) Certification "Certified for National Defense Use Under DMS Regulation 1 or BDC Regulation 2 (as appropriate)."

(4) Delivery schedule.

(5) Signature.

(b) Rated orders or Authorized Controlled Material Orders which are rejected by suppliers shall be forwarded to BDC, through established Departmental priorities assistance channels, for such action as BDC considers appropriate.

§ 1.319 Renegotiation performance reports.

* * * * *

(f) [Revoked]

§ 1.320 Industry security.

Procedures required to safeguard classified defense information to which U.S. contractors, subcontractors, vendors, or suppliers will possess or have access to are set forth in the Department of Defense Industrial Security Regulation (DoD 5220.22–R), hereinafter referred to as the ISR, and its companion publication, the Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22–M), hereinafter referred to as the ISM, together with supplements and revisions thereto. Procedures for the protection of information covered by foreign classified contracts awarded to U.S. industry and instructions for the protection of U.S. classified information in connection with classified contracts awarded to foreign firms are explained in section VIII, ISR (also see § 9.106 of this chapter).

§ 1.322–1 General.

(a) *Description of procedure.* Multiyear procurement is a method for competitive contracting for known requirements for military supplies or services in quantities and total cost not in excess of planned requirements for 5 years (4 years in the case of supplies or services for the maintenance and operation of family housing), set forth in, or in support of, the Department of Defense 5-Year Defense Program, even though the total funds ultimately to be obligated by the contract are not available to the contracting officer at the time of entering into the contract. Under this method, contract quantities are budgeted for and financed in accordance with the program year for which each quantity is authorized. This procedure provides for solicitation of prices based either on award of the current 1-year program quantity only, or, in the alternative, on the total multiyear quantities. Award is made on which ever of these two alternative bases reflects the lowest unit prices to the Government. If award is made on the multiyear basis, funds are obligated only for the first year's quantity, with succeeding years' contract quantities funded annually thereafter. In the event funds are not made available to support one or more succeeding year's quantities, cancellation is effected. The contractor is protected against loss resulting from cancellation by contract provisions allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items.

* * * * *

§ 1.322–2 Procedures for supply contracts.

* * * * *

(j) *Limitations.* Multiyear procurement of supplies shall not be used:

(1) When funds covering the procurement are limited by statute for obligation during the fiscal year in which the contract is executed (but see § 1.322-9, multiyear procurement of supplies and services for the maintenance and operation of family housing under Public Law 91-142);

* * * * *

§ 1.322-6 Multiyear procurement of services.

(a) *Description of procedure.* Multiyear procurement of services is a method for competitive contracting for known requirements for services and items of supply incidental to service contracts in quantities and total cost not in excess of planned requirements for 5 years (4 years in the case of services for the maintenance and operation of family housing) set forth in, or in support of, the 5-Year Defense Program, even though the total funds ultimately to be obligated by the contract are not available to the contracting officer at the time of entering into the contract. Under this method, requirements are budgeted for and financed in accordance with the program year for which each quantity is authorized. This procedure provides for solicitation of prices based either on award of the current 1-year requirements only, or, in the alternative, on total requirements representing the first and one or more succeeding years' requirements (multiyear). Award is made on whichever of these two alternative bases reflects the lowest prices to the Government. If award is made on the multiyear basis, funds are obligated only for the first year's quantity, with succeeding years' contract quantities funded annually thereafter. In the event funds are not made available to support one or more succeeding year's requirements, cancellation is effected. The contractor is protected against loss resulting from cancellation by contract provisions allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled requirements.

* * * * *

(c) *Limitations.* Multiyear contracts for services shall not be used:

(1) When funds covering the procurement are limited by statute for obligation during the fiscal year in which the contract is executed (1-year funds) (but see § 1.322-8, Multiyear Procurement of Services under Public Law 90-378, for multiyear procurement of specified services outside the 48 contiguous States and the District of Columbia; and § 1.322-9, multiyear procurement of supplies and services for the maintenance and operation of family housing under Public Law 91-142);

(2) To procure requirements which are in excess of the 5-year Defense Program;

(3) Until a written determination has been made that (i) there will be a continuing requirement for the services and incidental supplies consonant with current plans for the proposed contract period, and (ii) the furnishing of such services and incidental supplies will require a substantial initial investment in plant or equipment, the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs, and (iii) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies of operation. These determinations and findings shall be executed by:

(*a*) The Commanding Officer of the installation or activity, when the contract period will not exceed 2 years and the estimated annual expenditures thereunder do not exceed $350,000;

(*b*) The Head of the Procuring Activity when the contract period will exceed 2 years (except see (*c*) of this subdivision for multiyear procurement of services under Public Law 90-378) or when the contract period will not exceed 2 years but the estimated annual contract expenditure will exceed $350,000;

(*c*) The Assistant Secretary for Installations and Logistics, of the respective Departments, or the Directors of Defense Agencies for multiyear procurement of services performed outside the 48 contiguous States and the District of Columbia under Public Law 90-378 when the contract period will exceed 3 years regardless of dollar value.

§ 1.322-9 Multiyear procurement of supplies and services under Public Law 91-142.

(a) *General.* Under section 512 of Public Law 91-142, the Department of Defense is authorized to enter into contracts for periods of not more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such procurements shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in § 1.322-2 for supply contracts and §§ 1.322-6 and 1.322-7 for service contracts (except as provided in paragraphs (b) and (c) of this section). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 July-30 June).

(b) *Limitations.* Since procurements under this authority are limited for execution on a fiscal year basis, references to "program year" throughout §§ 1.322-6 and 1.322-7 shall be considered to mean "fiscal year."

(c) *Clauses.* The clauses set forth in § 1.322-8(c)(1) and (2) shall be included in all contracts for the procurement of supplies or services under this section on a multiyear basis.

§ 1.327 Use of excess aluminum in national stockpile.

§ 1.327-1 General.

It has been determined to be in the public interest to establish a Government Use Program requiring, to the maximum practicable extent, purchase of excess aluminum in the Government stockpile by defense contractors, directly or through subcontractors or suppliers, equal in weight to the weight of aluminum products as defined in § 7.104-59 of this chapter, purchased by the Government or used in the production of items delivered under defense contracts. In implementation of this Program, all contracts in the categories listed below, shall contain the clause in § 7.104-59 of this chapter; or in the case of construction contracts, the clause as modified in § 7.603-44 of this chapter.

(a) Purchases in the amount of $500 or more of aluminum products as defined in § 7.104-59 of this chapter.

(b) Purchases of supplies or construction in the amount of $25,000 or more where the aluminum products used in the production of items delivered under the contract or in the production of items incorporated in construction performed under the contract are estimated by the contracting officer to approximate 10,000 pounds or more.

These provisions do not apply to procurements of supplies or construction effected by procuring activities located outside, for use outside, the United States, its possessions, and Puerto Rico. These provisions are applicable to new procurements that are effected by modifications to an existing contract. In such cases, only the new procurement portion of the total contract is considered in determining whether the clause is required and, if required, the extent of its applicability.

§ 1.327-2 Contract clause.

In accordance with § 1.327-1, insert the clause in § 7.104-59 of this chapter, or in the case of construction contracts, the clause as modified in § 7.603-44 of this chapter.

§ 1.330 Contractor liability for defective supplies.

(a) It is the policy of the Department of Defense generally to act as a self-insurer for loss of or damage to property of the Government occurring after final acceptance of supplies delivered to the Government and resulting from any defects or deficiencies in such supplies. Exceptions to this policy are:

(1) Loss of or damage to the contract end item itself (but see paragraph (b)(1) of this section.

(2) When contractor liability can be preserved without increasing the contract price, and

(3) When contractor liability is expressly provided by a clause authorized by this regulation (but see § 7.104-45(b) of this chapter).

(b) Therefore, the clause set forth in § 7.104-45(a) of this chapter shall be inserted in all contracts requiring the delivery of supplies with exception of the following:

(1) *Major items.* In procurements of high dollar value items, it is Department of Defense policy, in addition to paragraph (a) of this section, to relieve the contractor from liability for loss of or damage to the contract end item occurring after final acceptance of such end

item. Accordingly, the clause in § 7.104–45(b) of this chapter shall be substituted for the clause in § 7.104–45(a) of this chapter in contracts for such items as missiles, aircraft, tanks, ships, aircraft engines, navigational and communications systems to the extent any of these items have a high unit cost. The § 7.104–45(b) of this chapter clause would not be appropriate when the contractor includes in his price a contingency for such losses. The § 7.104–45(b) of this chapter clause does not limit the Government's rights otherwise arising under the contract to have any defective items or components thereof, corrected, repaired or replaced when discovery of the defect occurs prior to loss of or damage to the contract end item or equivalent relief when the defect is discovered after loss or damage occurs.

(2) *Catalog or market priced items.* Contractors generally carry products liability insurance or similar insurance coverage or maintain a reserve for self insurance covering liability arising out of defective commercial items. Accordingly, the clause in § 7.104–45(a) of this chapter should not be used for catalog or market priced items (see § 3.807–1(b)(2) of this chapter) unless there is an appropriate reduction in the catalog or market price to reflect reduced contractor liability.

(3) *Purchase orders.* The § 7.104–45(a) of this chapter clause is optional for use with DD Form 1155, Order for Supplies or Services/Request for Quotations.

(4) *Contractor practices.* When it is a contractor's practice to insure for the liability excluded by the clause in § 7.104–45(a) of this chapter, the clause shall not be used unless it can be ascertained that the price includes no part of the cost of insurance or a reserve for self insurance for such liability.

§ 1.406 Contract administration functions.

* * * * *

(c) * * *

(51) In connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in the ISR and ISM (See Appendix C, Industrial Security Regulation, DoD 5220.22–R, for partial listing of primary responsibilities (also see § 1–320).);

* * * * *

§ 1.701–1 Small business concern.

(a)(1) *General definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further qualify under the criteria set forth in subparagraphs (2) and (3) of this paragraph. "Concern" means any business entity organized for profit with a place of business in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of a procurement of a product or service that could be classified into two or more industries with different size standards, the size standard to be used in determining a bidder's size status shall be that for the industry whose definition best describes the principal nature of the product or service being procured.

(2) *Industry small business size standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth below. "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets and interaffiliate transactions) of a concern (and its affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than one year, its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has 50 percent or more of its annual receipts attributable to business activity within Alaska then whatever size criterion of "annual receipts" is used in any size definition contained in this subpart, the stated dollar limitation for the purpose of qualifying as a small business concern shall be increased by 25 percent of the indicated amount.

(i) *Construction industries.* For construction, alteration, or repair (including painting and decorating), of buildings, bridges, roads or other real property, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed $7,500,000. For dredging, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $5 million. Also, in order to be eligible for a small business set-aside award on dredging contracts, the firms must perform the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

(ii) *Manufacturing industries*—(a) *Food canning and preserving industry.*—For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(b) *Refined petroleum products.*—Any concern bidding on a contract for a refined petroleum product other than Paving mixture and blocks, Asphalt felts and coatings, Lubricating oils and greases, or Products of petroleum and coal, not elsewhere classified, is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks: *Provided, however,* That a petroleum refining concern which meets the requirements in (i) and (ii) of (b)(1) may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in (iii) of (b)(1): *And, provided further,* That the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under (1) of (b).

(c) *Pneumatic tires.* For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided,* That (1) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period. This section does not apply to procurements for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is

considered for size standards purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

(*d*) *Passenger cars.* A company is classified as small if it is bidding on a contract for passenger cars: *Provided,* That (*1*) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (*2*) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such cars manufactured or produced in the United States during the said period, and (*3*) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(*e*) *Rebuilding of machinery on a factory basis.* Any concern bidding on a contract for the rebuilding of machinery or equipment on a factory basis is classified as small business: *Provided,* The purpose of the rebuilding is to restore such machinery or equipment to as serviceable and as like new condition as possible and the number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item. The size standard is not limited to concerns who are manufacturers of the original item but is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in (*e*) does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(*f*) *Manufacturing industries listed in § 1.701–4.* For a product classified within an industry listed in § 1.701–4, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

(*g*) *Manufacturing industries not listed in § 1.701–4.* For a product classified within an industry not set forth in this paragraph or in § 1.701–4, the number of employees of the concern and its affiliates must not exceed 500 persons.

(iii) *Nonmanufacturing industries.* For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons, and in the case of a procurement set aside for small business (see § 1.706) or involving equal low bids (see § 2.407–6 of this chapter), or otherwise involving the preferential treatment of small business (e.g., C.O.C. procedures, see § 1.705–4), it must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, Puerto Rico or the Trust Territory of the Pacific Islands by small business concerns. However, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. If the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread which has been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.)

(iv) *Service industries.* (*a*) For services not elsewhere defined in this part, the average annual receipts of the concern and its affiliates for the preceding 3 fiscal years must not exceed $1 million.

(*b*) Any concern bidding on a contract for engineering services (other than marine engineering services), motion picture production, or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(*c*) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $6 million.

(*d*) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(*e*) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(*f*) Any concern bidding on contracts for marine cargo handling services is classified as small if its annual receipts do not exceed $5 million for the preceding 3 fiscal years.

(*g*) Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million.

(*h*) (*1*) Any concern bidding on a contract for laundry including linen supply, diaper services, and industrial laundering, is classified small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(*2*) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified small if its average annual receipts for its preceding 3 fiscal years do not exceed $1 million.

(*i*) Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(*j*) Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(*k*) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(*l*) Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(*m*) Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(*n*) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(v) *Transportation industries*—(*a*) *General.* Except as provided in (*b*) and (*c*) of this subdivision, for passenger or freight transportation the number of employees of the concern and its affiliates must not exceed 500 persons.

(*b*) *Air transportation.* For air transportation, the number of employees of the concern and its affiliates must not exceed 1,000 persons.

(*c*) *Trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding.* For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual receipts of the concern and its affiliates must not exceed $5 million. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $5 million during its most recently completed fiscal year.

(vi) *Research, development or testing industries.* For research, development, or testing, which requires delivery of a manufactured product, a concern must (*a*) qualify as a small business manufacturer within the meaning of subdivision (ii) of this subparagraph for the industry in which the product is classified, or (*b*) qualify as a small business nonmanufacturer within the meaning of subdivision (iii) of this subparagraph. For research, development, or testing, which does not require delivery of a manufactured product, the number of employees of the concern and its affiliates must not exceed 500 persons.

(3) *Small business subcontractors.* In connection with subcontracts of $2,500 or less, any concern will be considered a small business concern if it, with its affiliates, employs not more than 500 employees. In connection with subcontracts exceeding $2,500, any concern shall be considered a small business concern if it qualifies as such under subparagraphs (1) and (2) of this paragraph.

(b) *Dominance in field of operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration is given to all

appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(d) *Number of employees.* In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or any other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding 4 quarters. If a concern has not been in existence for 4 calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b)(6) of the Small Business Act certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

§ 1.701–4 Manufacturing industry employment size standards.

The Standard Industrial Classification Manual (1967 Edition) index provides an alphabetical listing of products and the industry with which the product is associated, which includes references to the Classification Code set forth below.

MAJOR GROUP 19—ORDNANCE AND ACCESSORIES

Industry		
Census classification code		*Employment size standard (number of employees)*[1]
1925	Guided missiles and space vehicles, completely assembled.	1,000
1929	Ammunition except for small arms, n.e.c.	1,500
1931	Tanks and tank components	1,000
1951	Small arms	1,000
1961	Small arms ammunition	1,000

* * * * *

§ 1.704–2 Departmental small business advisors.

* * * * *

(b) Navy—Special Assistant for Small Business and Economic Utilization, Office of the Assistant Secretary of the Navy (Installations and Logistics), Navy Department, Washington, D.C.;

* * * * *

§ 1.704–3 Small business specialists.

(a) * * *

(1) Army—Head of procuring activity (see § 1.201–7) with authority to redelegate to installation or activity commanders under his jurisdiction without power of redelegation.

* * * * *

(3) Air Force—Commander of each central procurement activity; the Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small Business shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force Small Business Program within the Command. The Executive for Small Business at Major Air Command Headquarters other than Air Force Logistics Command and Air Force Systems Command may be on a part-time basis. The Executive for Small Business at PACAF may be appointed by the Base Commander, Hickam AFB, Hawaii.

* * * * *

§ 1.705–5 Contracting with the Small Business Administration.

(a) *Authority.* When the Administrator of the Small Business Administration (SBA) certifies to the Secretary concerned in accordance with section 8(a) of the Small Business Act (15 U.S.C. 637 (a)) that the SBA is competent to perform a specific contract, the contracting officer is authorized, in his discretion, to award the contract to the SBA.

(b) *Policy.* It is the policy of the Department of Defense (DOD) to enter into contracts with the SBA to foster or assist in the establishment or the growth of small business concerns as designated by the SBA so that these concerns my become self-sustaining, competitive entities within a reasonable period of time. The SBA is empowered to arrange for the performance of such contracts by negotiating or otherwise letting contracts to small business concerns or others.

(c) *Procedures*—(1) *Supplies, services and research and development.* (i) In contracts for supplies, services and research and development, it is the stated policy of the SBA to contract with only those small firms which have submitted a written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of paragraph (b) of this section. This business plan, if approved by the SBA, will be the basis for DOD's consideration of participation in a section 8(a) program for the firm. In the execution of this policy, the SBA will furnish to the Secretary of the appropriate Department. Attention: Economic Utilization Advisor, its request for a commitment to support the approved plan, showing at least the following information:

(*a*) The background and ownership of the firm;

(*b*) How and when the firm is expected to become a self-sustaining, competitive entity;

(*c*) The extent to which procurement assistance is needed and an identification of the requirements sought from the DoD (The identification of the supplies or services which the SBA may require in connection with a small firm's business plan will be developed by the SBA representatives. This may be accomplished through liaison with appropriate procuring activities either before or after the SBA's approval of a small firm's business plan as the SBA may elect. Small business and labor surplus area specialists at procuring activities shall cooperate and assist the SBA representatives in developing identifying information for the requirements being sought from the procuring activity. To the extent possible, identifying information furnished by the SBA will be definitive and include, purchase descriptions and federal stock numbers. The small business and labor surplus area specialist shall, when practicable and feasible, arrange for such additional assistance as may be required from procurement, technical and supply management officials in order that the development of the identifying information may be meaningful. Current and future requirements of a small firm's business plan, if identified in meaningful terms will enable the DoD to relate the items to present and future procurement requirements); and

(*d*) If the firm is currently in existence, the present production capacity and related facilities and how any additional facilities needed will be provided.

(ii) The Department concerned will evaluate the SBA's request for a commitment to support the business plan approved by the SBA and determine whether or to what extent the Departments can support the SBA request. In the evaluation of the SBA requested commitments, consideration shall be given to:

(*a*) Estimated total quantities of the identified items planned for procurement in the current fiscal year and, to the extent known, future fiscal years;

(*b*) Required monthly rates of production and delivery schedules;

(*c*) Items of similar complexity and nature if there are no known requirements of the specifically identified items;

(*d*) Problems encountered in prior production of the items either by the proposed contractor or other contractors;

(*e*) Impact if slippage in delivery occurs;

(*f*) Impact if items were procured historically by small business or labor surplus area set-aside; and

(g) Any other information concerning the items or the proposed contractor which is pertinent to the evaluation of the requested commitments.

(iii) After the SBA requested commitments have been evaluated, the Department concerned, through the Economic Utilization Advisor, will notify the Office of Business Development, SBA, Washington, D.C., or its designee of the extent to which it appears that contracts will be placed with the SBA as requested. This notification represents a firm commitment of the DoD to negotiate with the SBA: *Provided*, That there is no material change in requirements, availability of funds, and other pertinent factors. The Departments, through the Economic Utilization Advisor, will notify the appropriate procuring activities to reserve the initially identified requirements for negotiation of a section 8(a) award to the SBA. Within 10 working days after notification, the SBA will establish contact with the designated procuring activity and initiate negotiation of the section 8(a) contract in support of the SBA requested commitments. If negotiations with the procuring activity have not been initiated by the SBA within the time indicated, the procuring activity will notify the Departmental Economic Utilization Advisor of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the requirement.

(iv) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract to the Secretary of the Department with a copy to the designated procuring activities.

(v) A preaward survey of the SBA's contractor, as required by § 1.905-4, will not generally be requested by the DOD contracting officer. The SBA or the DOD contracting officer may request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA's contractor's responsibility.

(vi) Certified cost or pricing data, when required by § 3.807-3 of this chapter, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of appropriate cost or pricing data with a supporting certificate.

(vii) When satisfactory terms and conditions, including price, have been negotiated with the SBA's contractor, the contracting officer shall proceed with the award of a contract to the SBA, after approval has been obtained from: Department of the Army, the Deputy for Procurement, OASA (I&L); Department of the Navy, the Director of Procurement, OASN (I&L); Department of the Air Force, SAFIL; Defense Supply Agency, the Executive Director of Procurement and Production, or their designees.

(viii) For follow-on year procurements in support of the SBA requested commitment, the SBA will initiate individual requests to the Departments concerned for each ensuing proposed section 8(a) contract. This process will permit, prior to actual negotiations of follow-on section 8(a) awards, the Departments to verify the availability of requirements, funding and other pertinent factors. It will be the responsibility of the SBA to provide certification to the Secretary of the Department for each section 8(a) contract with a copy of the certification to the designated procuring activities.

(ix) To assist the SBA, DOD purchasing offices shall prepare two contract sets as follows:

(a) Prepare Standard Form 26 for use by the SBA with the SBA's contractor. The Standard Form 26 shall show "15 USC 637(a)" in Block 13 and contain all of the information required with the exception of the following, which will be inserted by the SBA:

(1) Block 1, the SBA contract number, which will be constructed in general conformance with section XX, Part 2 of the ASPR;

(2) Block 2, the effective date;

(3) Block 24, the signature of the SBA's contractor;

(4) Block 25, the SBA contractor's date;

(5) Block 27, the signature of the SBA's contracting officer;

(6) Block 28, the name of the SBA's contracting officer; and

(7) Block 29, the date signed.

The contract shall incorporate the general provisions of Standard Form 32, including DOD alterations thereto, and other appropriate provisions as required, recognizing that this contract will be executed between the SBA and the SBA's contractor. The contract also shall include the appropriate one of the following clauses:

(i) For all contracts excepting civil works contracts of the Corps of Engineers—

For the purposes of this contract, the reference to "his duly authorized representative" in the "Disputes" clause of this contract shall be deemed to refer to the Armed Services Board of Contract Appeals.

(ii) For civil works contracts of the Corps of Engineers—

For the purposes of this contract, the references to "his duly authorized representative" in the "Disputes" clause of this contract shall be deemed to refer to the Chief of Engineers, Department of the Army, or an individual or board designated by him.

The contract set prepared as shown herein will be provided to the SBA at the time of distribution of the contract set prepared in accordance with (b) of this subdivision.

(b) Prepare a Standard Form 26 for execution with the SBA without incorporating any general provisions of Standard Form 32. The general provisions are not applicable to the SBA. "10 USC 2304(a)(17)" shall be cited as the authority for negotiation of this contract. This contract shall include a statement as follows:

It is agree that the provisions of the "Termination for Convenience," "Changes," "Disputes," "Default," and "Price Reduction" clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the DoD Contracting Officer. If the SBA does not agree with the DoD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision.

(x) Contract administration functions will be performed by the cognizant contract administration office as listed in DoD Directive 4105.59-H (DoD Director of Contract Administration Services Components). Since the contractual relationship between the SBA and its contractor would be analogous to that of a PCO and a prime contractor, the contract administration assignment shall include all functions as required by ASPR and shall relate to the location of the SBA's contractor.

(xi) The execution and distribution of procurement documents shall be in accordance with section XX, Part 4 of the ASPR. The SBA is responsible for effecting execution and distribution to the DoD contracting offices and others of the contracts executed with its contractor.

(2) *Construction.* (i) In contracts for construction, it is the stated policy of the SBA to contract with only those small firms which have been approved by the SBA as supporting the policy objectives of § 1.705-5(b). In the execution of this policy, the SBA will furnish to the Secretary of the appropriate Department, Attention: Economic Utilization Advisor, its request for a commitment(s) showing at least the following information:

(a) The identification of the SBA's contractor(s) and the capabilities and qualifications of the contractor(s) to accomplish various categories of maintenance, repair, alteration, and construction work in such specific work project categories as mechanical, electrical, heat and air conditioning, demolition, building, painting, paving, earthwork, waterfront work or general construction work;

(b) The total extent to which procurement assistance is needed and an individual identification of the estimated dollar value in each category in which the SBA's contractor(s) have capabilities; for example, electrical up to $100,000, mechanical up to $100,000;

(c) Any other information concerning the capabilities of the proposed contractor(s) which would be pertinent to the evaluation of the requested commitments.

(ii) The Department concerned will evaluate the SBA's request for a commitment(s) and determine whether or to what extent the Departments have proposed work projects for which funding is available, in those categories for which the SBA has indicated its contractors have capabilities to perform. In the evaluation of the SBA's request for a commitment(s), consideration shall be given to:

(a) The extent to which work project(s) of the type requested by the SBA are planned for procurement in the current fiscal year and, to the extent known, future fiscal years;

(b) Required performance schedule(s);

(c) Work project(s) of similar complexity and nature if there are not known work project(s) of the specific type requested;

(d) Problems encountered in prior work project(s) of the type requested;

(e) Impact if slippage occurs in the performance schedule;

(f) Impact if the work project(s) was procured historically by small business set-aside; and

(g) Any other information concerning the work project(s) or the contractor which is pertinent to the evaluation of the requested commitment(s).

(iii) After the SBA requested commitments have been evaluated, the Department concerned, through the Economic Utilization Advisor, will notify the Office of Business Development, SBA, Washington, D.C., or its designee, of the extent to which it appears that contracts will be placed with the SBA as requested. This notification shall contain information with regard to the work project(s) as follows:

(a) A summary of the scope of the proposed work;

(b) Detailed Government cost estimates;

(c) Plans and specifications;

(d) Required performance schedules;

(e) Any other pertinent and reasonably available data.

The Departments, through the Economic Utilization Advisor, will notify the appropriate Defense contracting office to reserve the work project(s) for negotiation of a section 8(a) contract with the SBA. Within 10 working days after notification, the SBA will establish contact with the Defense contracting office and initiate negotiation of the section 8(a) contract in support of the SBA requested commitments. If negotiations with the Defense contracting office have not been initiated by the SBA within the time indicated, the Defense contracting office will notify the Departmental Economic Utilization Advisor of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the work project.

(iv) Provisions of the Miller Act with respect to performance and payment bonds do not apply to the prime contract between the contracting office and the SBA, but do apply to the contract between the SBA and its contractor.

(v) Certified cost or pricing data, when required by § 3.807-3 of this chapter shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of appropriate cost or pricing data with a supporting certificate.

(vi) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract to the Secretary of the Department with a copy to the Defense contracting office.

(vii) When satisfactory terms and conditions, including price, have been negotiated with the SBA's contractor, the Defense contracting office shall proceed with the award of a contract to the SBA, after approvals have been obtained from: Department of the Army, the Deputy for Procurement, OASA (I&L); Department of the Navy, Director of Procurement, OASN (I&L); Departmnet of the Air Force, SAFIL; Defense Supply Agency, the Executive Director of Procurement and Production; or their designees.

(viii) To assist the SBA, DOD contracting offices shall prepare two contract sets as follows:

(a) Prepare appropriate contractual documents for use by the SBA with the SBA's contractor. These documents shall be completed, except for signatures and award information, based on information requested or furnished by the SBA. This contract shall incorporate the mandatory general provisions and standard forms as required and also shall include the appropriate one of the following statements:

(1) For all contracts excepting civil works contracts of the Corps of Engineers—

For the purposes of this contract, the reference to "his duly authorized representative" in the "Disputes" clause shall be deemed to refer to the Armed Services Board of Contract Appeals.

(2) For civil works contracts of the Corps of Engineers—

For the purposes of this contract, the reference to "his duly authorized representative" in the "Disputes" clause shall be deemed to refer to the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) Prepare Standard Form 19 or Standard Form 23 or other appropriate forms for execution with the SBA without incorporating any general provisions. The general provisions are not applicable to the SBA. "10 U.S.C. 2304(a) (17)" shall be cited as the authority for negotiations of this contract. This contract shall include a statement as follows:

It is agreed that the provisions of the "Termination for Convenience," "Changes," "Differing Site Conditions," "Default-Damages for Delay-Time Extensions," "Suspension of Work," "Disputes," "Price Reduction" and "Payments to Contractor" clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the DOD Contracting Officer. If the SBA does not agree with the DOD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision.

(ix) Contract administration functions will be performed by the cognizant Defense contracting office.

(x) The execution and distribution of procurement documents shall be in accordance with section XX of the ASPR. The SBA will be responsible for effecting execution and distribution to the DOD contracting offices and others of contracts executed with its contractor.

§ 1.908-1 General.

The purpose of the Contractor Performance Evaluation Program is to provide an orderly and uniform method of determining and recording the effectiveness of contractors in meeting their contractual commitments. This procedure will increase the importance to the contractor of satisfying his agreements in regard to cost, schedule and technical performance. The program provides a long-term incentive to contractors by creating within the Government a "memory" of their performance and means for considering this record in future actions. The dollar value and type of effort required by a contract determine the reporting requirements, form(s) and procedures to be used. The evaluation of development contracts is specified by § 1.908-2; supply contracts by § 1.908-3; architect-engineer contracts by § 1.908-4; and construction contracts by §1.908-5.

§ 1.908-2 Contractor Performance Evaluation Report (Development Contracts).

All contracts between $100,000 and $2 million for (a) advanced development (with measurable contractual commitments), or (b) engineering and operational-systems development (except those with Federal Contract Research Centers) shall be evaluated on DD Form 1683, Contractor Performance Evaluation Report (Development). These evaluations shall be made by the project manager, project engineer or equivalent who has overall responsibility for the project and shall be reviewed by an official of a higher organizational level than the evaluator upon the completion, substantial completion or termination of the contract. To afford contractors an opportunity to review CPE Reports, whether favorable or not, within 20 days of the specified evaluation date, a copy of DD Form 1683 shall be mailed to a senior official of the contractor who shall be afforded 2 weeks from the date of mailing to submit a detailed justification to the reviewer to support any requested change in the evaluation report. The reviewer shall resolve inconsistencies of fact and, if appropriate, prepare a revised report and furnish a copy to the contractor. The reviewer shall advise the contractor of the reasons why any requested change was not made. The original copy of each resolved evaluation report shall be transmitted to the Defense Documentation Center, Attention: DDC-TSR, Cameron Station, Alexandria, Va. 22314, within 35 days of the specified evaluation date, except that an additional 15 days will be allowed when it is necessary to prepare a revised report. Any significant errors discovered subsequent to transmission shall be corrected by a revised report. Monitors designated by the Departments and Defense Agencies shall ensure that the reports are timely and clear. Contractors may appeal the reviewer's final decision by written submission to the appropriate monitor within 30 days after receipt of the reviewer's decision. The monitor shall have 60 days to resolve, or if necessary decide, the differences between the contractor and the reviewer and, if necessary, forward a revised report (DD Form 1683) to the data bank. The monitor shall advise the contractor of his resolution of

the matter. The Defense Documentation Center shall tabulate these Contractor Performance Evaluation Reports and provide for distribution, with quarterly revisions, of the performance evaluation information to procurement activities having need for the information for use by (1) Source Selection Advisory Councils or other persons or groups acting in similar capacity, (2) contracting officers in determining fees or profits and prospective contractor's responsibility, and (3) the Renegotiation Board (see §§ 4.106-4 (c) and (d), 3.808-4(a), and 3.808-5(d). These evaluation reports shall be retained for a minimum of 3 years. Report Control Symbol DD-DSA (AR) 1327(DDC) is assigned to these evaluation reports.

§ 1.908-3 Contractor Performance Record (Supply Contracts).

(a) A Contractor Performance Record (CPR) is a factual historical documentation of contract performance data prepared by the cognizant contract administration office on completed or terminated DoD supply contracts. The CPR provides an orderly and uniform method of determining and recording how effectively supply contractors meet their contractual commitments. For each supply contract of $100,000 or more, except those contracts authorized for retention by purchasing offices under section 20-703.2 of the ASPR, a contract performance record shall be prepared by the cognizant contract administration office utilizing DD Form 1661, Contractor Performance Record (Supply Contracts). These evaluation reports shall be retained for a minimum of 3 years. Subject to the approval of OASD (Installations and Logistics) and if the Departments concerned consider it desirable and make request therefor, certain other supply contracts that do not fall within the foregoing category may be recorded.

* * * * *

§ 1.908-6 Disclosure of contractor performance evaluation reports and records.

Contractor performance evaluation reports and records shall be classified in accordance with their content but, if not classified, shall be marked "For Official Use Only."

PART 2—PROCUREMENT BY FORMAL ADVERTISING

2. In § 2.201(a)(3)(xvii), the statement contained therein is amended, and new subdivisions (xxxii) and (xxxiii) are added; also in this section, paragraph (b), subparagraphs (24) and (25)(B) are amended; § 2.306 is revoked; § 2.407-8 (a)(1) is amended; and § 2.408-2 is revised, as follows:

§ 2.201 Preparation of invitation for bids.

(a) *Supply and services contracts.* * * *

(3) Section C—Instructions, Conditions and Notices to Bidders.

* * * * *

(xvii) Invitations for bid which will result in the placement of rated orders or Authorized Controlled Material Orders (see § 1.307 of this chapter) shall contain the following statement:

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a ☐ DX ------ rating; ☐ DO ------ rating; ☐ DMS allotment number ------ (Contracting Officer check appropriate box or boxes) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1. (April 1971)

* * * * *

(xxxii) When the contract is expected to contain requirements for provisioned items, include the information prescribed in § 4.302-1 of this chapter; and

(xxxiii) For procurements involving Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid), enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier to permit the contractor to comply with § 30.8 of this chapter, Part 3, Block 16(12).

* * * * *

(b) *Construction contracts.* * * *

(24) Invitations for bids which will result in the placement of rated orders or Authorized Controlled Material Orders (see § 1.307 of this chapter) shall contain the following statement:

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a ☐ DX ------ rating; ☐ DO ------ rating; ☐ DMS allotment number ------ (contracting Officer check appropriate box or boxes) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1. (April 1971)

(25) Unless exempted by § 12.805 of this chapter from inclusion of the Equal Opportunity clause—

* * * * *

(B) The applicable provisions set forth or identified in §§ 12.806 and 12.807-3 of this chapter;

* * * * *

§ 2.306 Late offers and modifications and withdrawals. [Deleted]

§ 2.407-8 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest. (See § 1.308(b)(1) of this chapter.) (See § 1.703(b) of this chapter for protests of small business status and § 12.604(a) of this chapter for protests involving eligibility under the Walsh-Healey Public Contracts Act.) An interested party wishing to protest to the Comptroller General of the United States against an award of a contract should do so in accordance with General Accounting Office Regulations, 4 CFR Part 20.

* * * * *

§ 2.408-2 Award of classified contracts.

In addition to § 2.408-1 (*a*) and (*b*), if classified information was furnished or created in connection with the solicitation, the PCO shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with the Industrial Security Manual (DoD 5220.22-M). Information with respect to the name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. No information regarding a classified award may be furnished by telephone.

PART 3—PROCUREMENT BY NEGOTIATION

3. Section 3.101(h) is deleted and the paragraph reserved; § 3.113 is deleted; §§ 3.210-2(r), 3.210-3, 3.213-5 and 3.403 (b)(3) are amended; § 3.409(c) is revised and paragraphs (d) and (e) are added; § 3.409-1(a) is amended; §§ 3.409-2(a) and 3.409-3(a) are revised; § 3.409-4 is revised; in § 3.501(b)(2)(xvi) is deleted and subdivision reserved and (xx) is deleted; also in this paragraph, subdivision (3)(xviii) is amended and new subdivisions (xli) and (xlii) are added; in § 3.501(c)(34) is amended and (38)(B) is revised and (39) is amended and (40) is deleted and reserved, and (50) is deleted; in § 3.608-2(b)(1)(i)(c) and (xiv) are amended and (xvii) is added; and in (c)(1) a new sentence is added; in § 3.608-8(c) under "Title and Instructions for Entries" Blocks 17 and 19 are amended; §§ 3.608-10 and 3.807-5(a)(3) are added; § 3.808-5(d)(2) is amended and (6)(v) is deleted and present subdivisions (vi) through (x) are redesignated (v) through (ix); and § 3.1008 is amended, as follows:

§ 3.101 Negotiation as distinguished from formal advertising.

* * * * *

(h) [Reserved]

* * * * *

§ 3.113 Examination of records. [Revoked]

§ 3.210-2 Application.

* * * * *

(r) When the contemplated procurement is to be reimbursed by a foreign country which requires that the product be obtained from a particular firm.

§ 3.210-3 Limitation.

The authority of §§ 3.210 through 3.210-3 shall not be used when negotiation is authorized by any other authority set forth in §§ 3.201 through 3.217, except that this authority shall be used in preference to § 3.212 and in procurements for foreign military sales described in § 3.210-2(r). The authority illustrated in § 3.210-2 (c) and (d) shall not be used in cases where "Small Business Restricted Advertising" has been used. However, the authority may be used in the case of partial set-asides unless in the judgment of the contracting officer the failure to obtain sufficient responsive bids was caused by the existence of the set-aside. The authority contained in § 3.210-2 (m) and (o) shall not be used in procurements in excess of $10,000 unless its use is approved in advance at a level higher than the contracting officer. Every contract that is negotiated under the authority of §§ 3.210 through 3.210-3 shall be accompanied with a determination and findings justifying its use, signed

by the contracting officer and prepared in accordance with the requirements of Subpart C of this part.

§ 3.213–5 Records and reports.

Each Military Department shall maintain on a current basis, a master list of items for which determinations and findings have been made under the authority of §§ 3.213—3.215–5.

§ 3.403 Negotiation of contract type.

* * * * *

(b) *Research and development (R&D).* * * *.

(3) *Engineering development and operational systems development.* Engineering and Operational Systems Development, because of many similarities, form a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and deployment, include all effort the primary objective of which is the engineering design and final engineering demonstration of the technical, economic, logistic and operational characteristics of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the possibility of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objective of producibility demonstration and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the product process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on the basis of major factors such as; (i) The definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of uncertainty expected; (iv) the contractor's willingness and ability to accept a high-risk type of contract; (v) the ability to establish meaningful and measurable incentives; (vi) the need for effort overlapping that of earlier development stages; (vii) the desirability of firm technical direction by the Government, and (viii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost plus incentive fee is the preferred type of contract for major development programs. However, another type or combination of types may be preferable for a given program. Cost plus incentive fee or other cost type contracts are preferred for other development programs. Notwithstanding this preference, a fixed price type contract may be appropriate in some circumstances, e.g., when a program has reached the final stages of development and technical risks are minimal.

§ 3.409 Indefinite delivery type contracts.

* * * * *

(c) Depending on the situation, indefinite delivery type contracts may provide for (1) firm fixed prices, (2) price escalation, (3) price redetermination, or (4) prices established in accordance with paragraph (d) of this section.

(d) When indefinite delivery type contracts, whether competitively awarded or not, are priced on the basis of catalog or market prices, the price to be paid may be determined by establishing an adjustment factor for application to the price in industry-wide pricing guides or manufacturer's price catalogs. Normally, the adjustment factor will be a fixed percentage discount for application to the price in effect on the date of each order.

(e) When it is desired to authorize the use of the fast pay procedure for orders not in excess of $2,500, the special data required by § 3.606–3(b) shall be included in the contract. The clause in § 3.606–3 (b) (4) shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

§ 3.409–1 Definite quantity contracts.

(a) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order.

* * * * *

§ 3.409–2 Requirements contracts.

(a) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds are obligated by each order and not by the contract itself.

* * * * *

§ 3.409–3 Indefinite quantity contracts.

(a) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. To assure that the contract is binding, the minimum must be more than a nominal quantity; yet it should not exceed the amount which the Government is fairly certain to order. When large individual orders or orders for more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds for other than the stated minimum quantity are obligated by each order and not by the contract itself.

* * * * *

§ 3.409–4 Orders.

(a) Orders placed under indefinite delivery type contracts shall contain the following information, consistent with the contract terms:

(1) Date of order;

(2) Contract number and order number;

(3) Item number and description, quantity ordered, and contract price;

(4) Delivery or performance date;

(5) Place of delivery or performance (including consignee);

(6) Packaging, packing, and shipping instructions, if any;

(7) Accounting and appropriation data; and

(8) Any other pertinent information.

(b) Orders may be placed by means of written telecommunications media, if:

(1) The contract provides for the placement of orders by such means,

(2) The orders are approved by the contracting officer prior to transmission, and

(3) The purchasing office retains all contract administration functions.

§ 3.501 Preparation of request for proposals or requests for quotations.

* * * * *

(b) *Contract forms and uniform contract format.* * * *

(2) Section B—Contract Forms and Representation, Certifications, and Other Statements of Offeror or Quoter.

* * * * *

(xvi) [Reserved]

* * * * *

(xx) [Deleted]

(3) Section C—Instructions, Conditions, and Notices to Offerors/Quoters.

* * * * *

(xviii) Solicitations which will result in the placement of rated orders or Authorized Controlled Material Orders (see § 1.307 of this chapter) shall contain the following statement:

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a ☐ DX _____ rating; ☐ DO _____ rating; ☐ DMS allotment number _____ (Contracting Officer check appropriate box or boxes) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1. (APRIL 1971)

* * * * *

(xii) When the contract is expected to contain requirements for provisioned items, include the information prescribed in § 4.302-1 of this chapter; and

(xiii) For procurements involving Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid), enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier to permit the contractor to comply with § 30.8, Block 16 (12), of this chapter.

(c) *Construction contracts.* * * *

(34) Requests for Proposals which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the following statement:

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a ☐ DX _____ rating; ☐ DO _____ rating; ☐ DMS allotment number _____ (Contracting Officer check appropriate box or boxes) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1. (April 1971)

* * * * *

(38) Unless exempted by § 12.805 of this chapter from inclusion of the Equal Opportunity clause—

* * * * *

(B) The applicable provisions set forth or identified in §§ 12.806 and 12.807-3 of this chapter.

(39) The applicable small business size standard (see §§ 1.701 and 1.703 of this chapter); pending revision of the October 1969 edition of Standard Form 19B, Representations and Certifications, substitute $5 million for $7,500,000 in paragraph 1 when the procurement is for dredging;

(40) [Reserved]

* * * * *

(50) [Deleted]

§ 3.608-2 Order for Supplies or Services/Request for Quotations (DD Forms 1155, 1155r, 1155r-1; Standard Form 36; DD Form 1155c-1 and Standard Form 30).

* * * * *

(b) *Conditions for use.* * * *

(1) * * *

(i) * * *

(c) DD Form 254 (Contract Security Classification Specification) (see § 16.811 of this chapter) is incorporated in the purchase order; and

* * * * *

(xiv) When required by Subpart C, Part 1 of this chapter, the clause set forth in § 7.104-59 of this chapter shall be added.

* * * * *

(xvii) The Limitation of Liability for Defects clause set forth in § 7.104-45(a) of this chapter may be used in accordance with § 1.330(b)(3) of this chapter.

* * * * *

(c) *Solicitation and evaluation of quotations*—(1) *General.* * * * When using a teletype as a request for quotation, general provisions applicable to the solicitation shall be incorporated by reference.

* * * * *

§ 3.608-8 Instructions for entries on DD Form 1155 and Standard Form 36.

* * * * *

(c) * * *

Block No.	Title and instructions for entries	Applicable to— RFQ	TO	DO
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 20-308.3 of the ASPR.	.....	P	P
***	***	***	***	***
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.			
	(i) *Federal Stock Number (FSN)*—Total Item Quantity for the line or subline item number followed by the appropriate Federal Stock Number or the word "none" if an FSN has not been assigned. On the same line and adjacent to FSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22, and 23).	P	P	P
	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in section I, Part 12. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with 20-308.3(c) of the ASPR.	P	P	P
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place.	P	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD-726 codes or reference to applicable specifications. First example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/1/3/2/00. Second example: Preservation and packaging shall be in accordance with instructions below. DGSC P-54 in lieu of level "c" requirement.	P	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated, or state the specific requirements. First example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD-794; Second example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC Manual 4100.1.	P	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-35078C Type (I or II) Class (A through F for Type I, A through D for Type II). Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P	P
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with 20-308.3(c)(i) of the ASPR. When several items are to be shipped to the same point, the code will be listed; but, it will not be necessary to repeat the clear text address.	P	P	P
	(ix) *Issue Priority Designator*—If a priority is applicable enter the code as prescribed in DoD Instruction 4410.6 on the same line and adjacent to the ship to address code.	—	P	P
	(x) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code.	P	P	P
	(xi) *Mark For*—Enter the organizational entity code (address code) on the on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P	P
***	***	***	***	***

§ 3.608–10 Purchase orders via written telecommunications media.

(a) A written telecommunicated purchase order is an order for supplies or services which is electrically transmitted to a supplier and which is not signed by the contracting officer.

(b) A written telecommunicated purchase order may be used only when all of the following conditions are present:

(1) Its use is more advantageous to the Government than any other small purchase technique,

(2) An unsigned transmitted order is acceptable to the supplier,

(3) The order is approved by the contracting officer prior to its transmission,

(4) The order does not require written acceptance by the supplier, and

(5) The purchasing office retains all contract administration functions.

(c) When a written telecommunicated purchase order is used:

(1) The General Provisions on DD Form 1155r shall be incorporated by reference in the transmitted order, as appropriate;

(2) Administrative information which is not needed by the supplier should not be transmitted but should be placed only on copies intended for internal distribution;

(3) The same distribution shall be made of the transmitted order as is made of DD Form 1155; and

(4) No DD Form 1155 or other small purchase form shall be issued.

(d) A written telecommunicated purchase order may be unpriced: *Provided*, It meets the conditions set forth in § 3.608–3.

§ 3.807–5 Defective cost or pricing data.

(a) * * *

(3) In determining the amount of an adjustment in the contract price because of defective cost or pricing data, the contracting officer shall consider any understated cost or pricing data submitted in support of price negotiations for the same pricing action (e.g., for the initial pricing of the same contract or for pricing the same change order), up to the amount of the Government's claim for overstated cost or pricing data arising out of the same pricing action. Such offsets, however, need not be in the same cost groupings (e.g., material, labor or overhead).

* * * * *

§ 3.808–5 Assignment of values to specific factors.

* * * * *

(d) *Record of contract performance.* * * *

(2) Contracting officers should insure that an adequate review is made of contractor's past performance in order that an objective evaluation may be accomplished. For assistance in determining fee or profit for an advanced-development, engineering-development, or operational-systems-development contract between $100,000 and $2 million the contracting officer may obtain from the Defense Documentation Center, Attention: DDC–TSR, Cameron Station, Alexandria, Va. 22314 (see § 1.908–2 of this chapter), a summary of the performance evaluations of the contractor with whom negotiations are being conducted. This information or a statement that there is no record on file shall be furnished within 2 working days from receipt of the request by the Defense Documentation Center. Similarly, on supply contracts for $100,000 or more, contracting officers may obtain from the cognizant contract administration office copies or a summary of the Contractor Performance Records (Supply Contracts) DD Form 1661 (see § 1.908–3 of this chapter) of the contractor with whom negotiations are being conducted. This information or a statement that there is no record on file shall be transmitted within 2 working days after receipt of request by the cognizant contract administration office. Reports of cost reduction monitors, small business, labor surplus and other specialists involved in the evaluation of the various aspects of contractor performance shall be obtained.

* * * * *

(6) * * *

(iv) *Reliability of cost estimates.* Accuracy and reliability of previous cost estimates should be considered.

(v) *Value engineering accomplishments.* Outstanding accomplishments from value engineering efforts such as substantial savings in later contract costs, spare parts support, or maintenance, should be given special consideration. This factor should be used in recognition of outstanding accomplishments and is in addition to contractor sharing under value engineering incentive provisions in individual contracts.

(vi) *Timely deliveries.* The contractor's delivery record, considering excusable delays and the contractor's efforts to overcome delays, should be analyzed.

(vii) *Quality of product.* Experience with the contractor's product reliability, including the rate of rejection of his product and his acceptance of responsibility for continuing support should be considered.

(viii) *Inventive and developmental contributions.* Extent and nature of contractor-initiated and financed research, development, design work, product engineering, quality control, and manufacturing processes and techniques should be analyzed.

(ix) *Labor surplus area participation.* A similar review and evaluation (as required in paragraph (a) of this section) should be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program pursuant to § 1.805–1 of this chapter. Particular favorable consideration should be given to a contractor who (*a*) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (*b*) promotes maximum subcontractor utilization of certified-eligible concerns, as defined in § 1.801–1 of this chapter.

§ 3.1008 Maintenance of records.

Each Defense Contract Administration Services Region shall maintain a current central register of CWAS ratings established for contractors subject to ACO cognizance by that Region. Copies of all CWAS ratings approved, withdrawn, or reinstated by regional ACO's will also be forwarded to Headquarters, Defense Supply Agency, Attention: DCAS–ACC, where a master register will be maintained. Similarly, ACO's assigned under the National Plant Cognizance Program will forward copies of all CWAS ratings approved, withdrawn, or reinstated for their contractors to Headquarters, Defense Supply Agency, Attention: DCAS–ACC, for integration into the master register. This master register is maintained for benefit of contracting officers, auditors, and other Department of Defense personnel who may require approved CWAS ratings on contractors who have reported under these procedures. These ratings may be obtained from Headquarters, Defense Supply Agency, Attention: DCAS–ACC.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. The table of contents to Part 4 is amended by adding a new Subpart C; § 4.106–4 (c) and (d) are amended; Subpart C is added, as follows:

§ 4.106–4 Evaluation for award.

* * * * *

(c) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but also all other pertinent factors including management capabilities, cost controls, and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement (see § 1.903 of this chapter). The contracting officers shall notify those sources whose proposals or offers have been determined to be unacceptable of that decision in accordance with § 3.508 of this chapter.

(d) For assistance in evaluating proposals for an advanced-development, engineering-development or operational-systems-development contract between $100,000 and $2 million, the Source Selection Advisory Council or any other person or group acting in a similar capacity should obtain from the Defense Documentation Center, Attention: DDC–TSR, Cameron Station, Alexandria, Va. 22314 (see § 1.908–2 of this chapter), a summary of the performance evaluations of all contractors submitting acceptable proposals. This information or a statement that there is no record on file shall be furnished within 2 working days from receipt of the request by the Defense Documentation Center.

Subpart C—Contracts With Requirements for Provisioned Items

Sec.	
4.300	Scope of subpart.
4.301	Definitions.
4.301–1	Provisioned item.
4.301–2	Provisioning activity.
4.301–3	Provisioning procedure.
4.301–4	Provisioning requirements statement.
4.301–5	Provisioning technical documentation.

Sec.
4.301-6 Provisioned items order.
4.302 Procurement requirements.
4.302-1 Contract requirements.
4.302-2 Issuance of provisioned items orders.
4.303 Contract administration requirements.
4.303-1 Provisioning conferences.
4.303-2 Monitoring by the Contract Administration Office.
4.303-3 Negotiating and executing supplemental agreements.

AUTHORITY: The provisions of this Subpart C issued under secs. 2202, 2301-2314, 70A Stat. 120, 127-133; 10 U.S.C. 2202, 2301-2314.

Subpart C—Contracts With Requirements for Provisioned Items

§ 4.300 Scope of subpart.

This subpart sets forth contract requirements and procedures to be followed with respect to the provisioning process.

§ 4.301 Definitions.

§ 4.301-1 Provisioned item.

Provisioned item means any support-type item selected through provisioning procedures to support an end item of equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

§ 4.301-2 Provisioning activity.

Provisioning activity means that organization of a using Military Service, or that organization delegated by a using Service, which is responsible for the selection of, and the determination of requirements for, provisioned items.

§4.301-3 Provisioning procedure.

Provisioning procedure means the contract specification which sets forth the general requirements governing the acquisition of provisioned item and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

§ 4.301-4 Provisioning requirements statement.

Provisioning requirements statement means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marketing requirements for provisioned items, and contractor requirements for provisioning screening.

§ 4.301-5 Provisioning technical documentation.

Provisioning technical documentation means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be procured. It generally includes (a) provisioning lists, (b) priced spare parts lists, and (c) EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning technical documentation.

§ 4.301-6 Provisioned Items Order.

Provisioned Items Order means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are procured by supplemental agreement or by separate contract.)

§ 4.302 Procurement requirements.

§ 4.302-1 Contract requirements.

Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

(a) Include a Provisioning Requirements Statement or specify a time (e.g., days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(b) Provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(c) Require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(d) Specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items (Such instructions shall require the contractor to advise the PCO or Provisioning Activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(e) Provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(f) Specify exhibit identifiers applicable to the contract line/subline items.

(g) Specify the activity designated to issue Provisioned Items Orders, i.e., PCO, Provisioning Activity or ACO (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(h) Include procedures for processing changes in quantities of items ordered, including cancellations.

§ 4.302-2 Issuance of Provisioned Items Orders.

Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 20-204.3 of the ASPR.

(a) The term PROVISIONED ITEMS ORDER, in capital letters and underscored, shall be entered in Block 12.

(b) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 12.

(c) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(d) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(e) Upon receipt of advice from the contractor, as provided in § 4.302-1(d), the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(f) Orders shall be given the same distribution as the basic contract except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the PCO and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

§ 4.303 Contract administration requirements.

§ 4.303-1 Provisioning conferences.

The PCO or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (a) Insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (b) coordinate, as necessary, with the contractor and the PCO or Provisioning Activity to determine the types of and schedules for provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings, etc.; and (c) assist, if required, in the development of conference agenda. When requested by the PCO or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

§ 4.303-2 Monitoring by the Contract Administration Office.

The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(a) Prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(b) Review contractor progress in the preparation of provisioning technical

documentation and, on request of the PCO or Provisioning Activity, inspect such documentation for format and content;

(c) Insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(d) Advise the PCO or Provisioning Activity, in accordance with § 25.203, of this chapter of provisioning technical documentation delivery delays or other related problems;

(e) Insure contractor compliance with contract requirements relative to the assignment of Federal Stock Numbers;

(f) Insure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

§ 4.303–3 Negotiating and executing supplemental agreements.

The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order: *Provided,* That, when time in excess of 60 days is allowed for submission of price quotations (see § 4.302–1(e)), the 180 day period shall be adjusted accordingly. He also shall maintain records to reflect the status of Provisioned Items Orders as to (a) adequacy of obligated funds, (b) due dates for price quotations, and (c) actions taken to obtain additional funds or deobligate excess funds.

(1) In the process of negotiating prices, the ACO shall:

(i) Determine the acceptability of pricing methods proposed by the contractor;

(ii) Verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the PCO or Provisioning Activity; and

(iii) Avail himself of data from similar contracts with the contractor, making use of audit records and information available from the PCO or Provisioning Activity. Price negotiation policies and techniques set forth in Part 3, Subpart H, of this chapter, shall be followed, including the record of price negotiations required by § 3.811 of this chapter.

(2) When delivery dates are not proposed by the PCO or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the PCO or Provisioning Activity prior to execution of the supplemental agreement.

(3) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned Items Orders may incorporate multiple orders, or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5. Section 5.102–3 is revised; §§ 5.1108 and 5.1108–1(f) are amended; and §5.1201–2(d) is revised, as follows:

§ 5.102–3 Applicability of listed Federal Supply Schedules.

Supplies and service covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see Subpart B of this part for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

(a) *Mandatory nationally.*

FSC Group	FSC Class	Title of schedule	Remarks
25		VEHICULAR EQUIPMENT COMPONENTS	No exceptions.
	2520	Clutch facings (metallic).	
	2530	Brake linings (metallic).	
	2540	Tire chains.	
26		TIRES AND TUBES, PART II	No exceptions.
	2610	Tires, pneumatic, vehicular (highway) inner tubes, pneumatic tires.	
26		TIRES AND TUBES, PART IV	No exceptions.
	2630	Tires, solid and cushion.	
26		TIRES, PNEUMATIC, PART V	No exceptions.
	2610	Tires, motorcycle, off-highway, industrial, and pursuit/emergency high-speed vehicle.	
35		SERVICE AND TRADE EQUIPMENT	No exceptions.
	3530	Heat and cold process laminating presses.	
	3540	Wrapping and packaging machinery.	
36		SPECIAL INDUSTRY MACHINERY, PART I	No exceptions.
	3610	Section A—Offset blankets, rubber. Section B—Lithographic printing plates, lithographic solutions, fountain solutions.	
36		PRINTING, DUPLICATING, AND BOOKBINDING EQUIPMENT, PART II.	Not mandatory for the following items: 51-1, 51-1-1, 51-2, 51-3, 51-60, 51-104, 51-110, 51-110-1, 51-113, 51-125, 51-125-1, 51-126, 51-127, 51-140, 51-143, and 51-145 in section A and all items in sections B and C.
	3610	Section A—Purchase of machines. Section B—Rental, repair, and maintenance of machines.	
	3615	Section C—Purchase of machines.	
36		PRINTING, DUPLICATING AND BOOKBINDING EQUIPMENT, PART IV.	Not mandatory for the following items: 51-4, 51-5, 51-6, 51-10, 51-11, 51-12, 51-28, 51-29, 51-30, 51-31, 51-32, 51-33, 51-37, 51-38, 51-39, 51-43, 51-44, 51-45, 51-46, 51-47, 51-48, 51-52, 51-53, and 51-54 and items in section B.
	3610	Section A—Purchase of copying machines. Section B—Rental, repair, and maintenance of machines.	
41		AIR-CONDITIONING EQUIPMENT, PART I	No exceptions.
	4120	Air conditioners: Window types and floor mounted.	
41	4130	AIR FILTER MEDIA	No exceptions.
45		MISCELLANEOUS PLUMBING, HEATING AND SANITATION EQUIPMENT, PART II.	No exceptions.
	4540	Incinerators security (document destruction).	
	6685	Replacement pyrometers.	
51		HAND AND POWER TOOLS	Mandatory only for items in FSG 51 and FSC 5210.
	5110	Hand tools, edged, nonpowered.	
	5120	Hand tools, nonedged, nonpowered.	
	5130	Hand tools, power driven.	
	5133	Drill bits, counterbores, and countersinks; hand and machine.	
	5136	Taps, dies, and collets; hand and machine.	
	5140	Tool and hardware boxes.	
	5180	Sets, kits, and outfits of hand tools. NOTE: This schedule also includes certain items in FSC's 3220, 3410, 3413, 3415, 3416, 3417, 3433, 5210, 5999, 6120, 6140, and 6220.	
52		MEASURING TAPES	No exceptions.
	5210	Measuring tapes, complete line; steel, stainless steel, metallic woven, and other accessories.	
53		ABRASIVES	No exceptions.
	5345	Abrasive belts, disks, and stones.	
	5350	Abrasive cloth, grain and paper.	
58		SOUND RECORDING AND TRANSCRIPTION SERVICE, PART I.	Not mandatory when satisfactory security arrangements of highly classified material cannot be made in accordance with requirements under paragraphs 13 of the Special Provisions Federal Supply Schedule and on instantaneous recording; recording of one tape only, or multiple duplication.
	5835	Studio rental; tape recording, re-recording, and editing; Disc recording and pressing.	
58		COMMUNICATION EQUIPMENT, PART III, SECTION A. NOTE: Also includes items of foreign origin.	No exceptions, except not mandatory on DOD for language laboratory-type intercommunications sets.
58	5830	Intercommunication sets (language laboratory type).	
	5835	Sound recording and reproducing equipment.	
58		COMMUNICATION EQUIPMENT, PART III, SECTION B	No exceptions.
	5820	Video equipment.	
	5835	Recorder—Reproducer sets, sound, tape magnetic: Cartridge type, duplicators, signed type; reproducers, sound: Disc type, tape type.	

FSC Group	Class	Title of schedule	Remarks
58		COMMUNICATION EQUIPMENT, PART V	Not mandatory for high resolution and instrumentation tape.
	5820	Tape, video.	
	5835	Tapes, instrumentation, high resolution and sound recording.	
		Reels, cartridges, and cassettes:	
	7440	Electronic data processing tape (widths other than ½ inch).	
58		COMMUNICATION EQUIPMENT, PART V, SECTION A	No exceptions:
	7440	Tape, electronic data processing, ½ inch 800 BPI and 1600 BPI.	
61		DRY BATTERIES, PART III	No exceptions:
	6135	Batteries and dry cells for: Alarm systems, emergency lighting, flashlights and lanterns, telephone circuits and radio tubes.	
62		LIGHTING FIXTURES AND LAMPS, PART I	Not mandatory for the Department of Army Air Force for any item covered by Army/Military Specification.
	6230	Household and quarters lamps.	
62		ELECTRIC LAMPS, PART II	No exceptions:
	6230	Light sets, general illumination (emergency) and (auxiliary).	
62		LIGHTING FIXTURES AND LAMPS, PART III	No exceptions:
	6210	Fluorescent—Incandescent tungsten-filament: Extended service, general lighting, miscellaneous, rough service.	
62&67		ELECTRIC AND PHOTOGRAPHIC LAMPS	No exceptions:
	6210	Fluorescent, glow, mercury vapor, high intensity, incandescent tungsten filament, photographic (other).	
	6750	Photographic lamps.	
66		INSTRUMENTS AND LABORATORY EQUIPMENT, PART III.	No exceptions.
	6645	Time measuring instruments and card racks.	
67		PHOTOGRAPHIC EQUIPMENT, PART III	Mandatory only for Item 20-70(a), prompter, projectors, professional television studio type.
	6710	Cameras, motion picture.	
	6720	Cameras, still picture, and accessories.	
	6730	Photographic project equipment, finishing equipment.	
	6740	Photographic developing and finishing equipment.	
	6750	Photographic supplies.	
	6760	Photographic equipment and accessories.	
	6780	Photographic sets, kits, and outfits.	
67		PHOTOGRAPHIC EQUIPMENT, PART IV, SECTION A	No exceptions:
	6750	Film, direct—Positive (diazotype).	
67		PHOTOGRAPHIC EQUIPMENT, PART IV, SECTION B	Mandatory except for Item 21-12.
	6720	Microfilm cameras.	
	6730	Microfilm projectors, readers, and viewers.	
	6740	Microfilm and paper processing machines; printers, rewinds; and film splicers.	
	6750	Microfilm spools, reels, and cartons.	
	7530	Microfilm print paper.	
	7670	Microfilmed library systems.	
68		CHEMICALS AND CHEMICALS PRODUCTS, PART III, SECTIONS E AND F.	No exceptions.
	6830	Compressed and liquefied gases: Section E—Refrigerant gases. Section F—Sulfur hexafluoride.	
68		CHEMICALS AND GASES, PART III, SECTION G	Mandatory on destinations listed in the schedule.
	6830	Helium.	
68		CHEMICALS AND GASES, PART III, SECTION H	No exceptions.
	6830	Fire extinguishing fluorocarbons.	
68		CHEMICALS AND CHEMICAL PRODUCTS, PART III, SECTION J.	No exceptions.
	6830	FSN 6830-882-1793 Argon, missile checkout.	
71		HOUSEHOLD FURNITURE, PART I	No exceptions.
	7105	Household furniture.	
71		HOUSEHOLD FURNITURE, PART II, SECTION A	No exceptions.
	7105	Upholstered living room furniture: matching sofas, settees, sectionals, and chairs; lounge chairs.	
71		HOUSEHOLD FURNITURE, PART II, SECTION B	No exceptions:
	7105	Multiple seating units, modular, wood or metal.	
71		HOUSEHOLD FURNISHINGS, PART III, SECTIONS A AND B.	No exceptions:
	7105	Living room furniture, modern and traditional furniture: Bedroom, dining room, and living room, miscellaneous chairs, and tables.	
71		HOUSEHOLD FURNITURE, PART IV	No exceptions:
	7105	Rattan furniture: Bedroom, dining room, living room, and recreation room.	
		Squared stock rattan furniture: Bedroom, dining room, living room, and recreation room.	
71		OFFICE FURNITURE, WOOD AND METAL, PART V	No exceptions:
	5340	Parts for folding chairs.	
	7105	Ash receptacles, folding chairs, mirrors, wardrobes.	
	7110	Office furniture.	
	7125	Key cabinets, metal.	
	7195	Bulletin boards, folding tables, dictionary stands—wood.	
71		EXECUTIVE TYPE OFFICE FURNITURE, PART VI	No exceptions:
	7110	Bookcases, cabinets, chairs, credenzas, desks, telephone cabinets, typewriter stands.	
	7195	Costumers.	
71		HOUSEHOLD FURNITURE, PART VII, SECTION A	Not mandatory for Department of Defense for bunk beds for FSN's 7105-935-3270, 7105-935-3271, and 7105-987-0220.
	7105	Metal, indoor-outdoor, hospital and quarters, and recreation room, and lobby use.	
71		HOUSEHOLD FURNITURE, PART VII, SECTION B	Not mandatory for Department of Defense for bunk beds for FSN's 7105-935-3270, 7105-935-3271, and 7105-987-0220.
	7105	Metal framed, dormitories and quarters use.	
71		OFFICE FURNITURE, PART VIII	No exceptions.
	7105/7110	Office furniture, executive-type wood: Section A—Traditional. Section B—Modern. Section C—Unitized.	
71		OFFICE FURNITURE, PART IX	No exceptions:
	7110	Accessories for EAM and ADP systems, address plate cabinets, key punch cabinets.	
71		SPECIAL PURPOSE FURNITURE, PART X	No exceptions.
	GP71	Chairs, chair and desk units, desks, tables and other types of special purpose furniture.	
71		OFFICE FURNITURE, PART XI	No exceptions.
	7110	Security filing cabinets.	
		Security vault door.	
		Security map and plan files.	
71		OFFICE FURNITURE EXECUTIVE, WOOD, AND METAL, PART XII.	No exceptions:
	7110	Bookcases, telephone cabinets, chairs, credenzas, desks, desk attachments.	
71		LIBRARY FURNITURE, METAL AND WOOD, PART XIII	No exceptions.
	7195	Bookcase; bookstock; book truck; cabinets; chair and desks; end panels; racks; settees and chairs; stands; stools; tables.	
71		SHOP DESK AND WORK BENCHES, PART XIV	Mandatory for items specified:
	7110 7125 7195	Work benches and shop desks.	
71		HOUSEHOLD FURNITURE, PART XV	No exceptions.
	7105	Composite metal and wood furniture; dinette furniture; writing tables; and stacking chairs.	
72		HOUSEHOLD FURNISHINGS, PART I, SECTIONS A AND	Not mandatory on DOD for installation of wall-to-wall carpeting and for deck covering and other items required for use aboard vessels.
	7220	Carpet, rugs and cushions.	
72		HOUSEHOLD FURNISHINGS, PART I, SECTION A, SUPPLEMENT 1.	Not mandatory on DOD for installation of wall-to-wall carpeting and for deck covering and for other items required for use aboard vessels.
	7220	Special purpose carpet.	
72		HOUSEHOLD FURNISHINGS, PART I, SECTION A, SUPPLEMENT 2.	Not mandatory on DOD for installation of wall-to-wall carpeting and for deck covering and other items required for use aboard vessels.
	7220	Special purpose carpet.	

FSC Group	Class	Title of schedule	Remarks
72		HOUSEHOLD FURNISHINGS, PART I, SECTION B	Not mandatory on DOD for installation of wall-to-wall carpeting and for deck covering and other items required for use aboard vessels
	7220	Linoleum tile:	
72		HOUSEHOLD FURNISHINGS, PART I, SECTION C	Not mandatory on DOD for installation of wall-to-wall carpeting and for deck covering and other items required for use aboard vessels.
	7220	Carpet mats and mattings.	
72		HOUSEHOLD FURNISHINGS, PART IV	No exceptions.
		Executive type floor mats (for chairs).	
72		HOUSEHOLD WINDOW FURNISHINGS, PART II	Mandatory for window shades only.
	7230	Window shades.	
73		FOOD PREPARATION AND SERVING EQUIPMENT, PART II.	Mandatory for glassware only.
	7350	Glassware: Stemware and tumbler.	
74		OFFICE MACHINES, PART I	Mandatory on DOD for all section A items, except Special Items 47-15, 47-22, and 47-28 (repair parts); optional for items in sections B and C.
	7430	Section A—Purchase of composing machines, typewriters, and repair parts.	
		Section B—Rental, repair, and maintenance.	
		Section C—Exchange allowance.	
74		OFFICE MACHINES OTHER THAN TYPEWRITERS, PARTS II AND III.	Not mandatory on DOD for repair parts or Part II, rental repair and maintenance.
	7420	Accounting and calculating machines.	
	7450	Office-type sound recording and reproducing machines.	
	7490	Miscellaneous office machines Part II: rental, repair, and maintenance.	
74		OFFICE MACHINES, PART IV	Not mandatory on DOD for section B items.
	7460	Section A—Visible record equipment control boards.	
		Files: Book unit, cabinet, posting tray ledger, rotary, stationery, and vertical; frames, racks, binder, trays; cabinet.	
		Section B—Rental, repair, and maintenance of visible record equipment.	
74		DATA PROCESSING EQUIPMENT AND SOFTWARE, PART VI.	No exceptions.
		Rental, purchase, maintenance, repairs, and repair parts.	
	7410	Punched card machine equipment.	
	7440	Automatic data processing equipment and software.	
75		OFFICE SUPPLIES, PART I, SECTION A	No exceptions.
	7510	Office supplies (includes certain items of art and drafting supplies).	
	7030	Label tape, pressure sensitive adhesive.	
	7670	Tape label marking.	
75		OFFICE SUPPLIES, PART I, SECTION B	No exceptions.
	7520	Office devices and accessories.	
	7530	Stencil, paper.	
	8115	Boxes, set-up.	
	8135	Tape, pressure sensitive, plastic back and tags merchandise.	
	9310	Cardboard, bristol.	
75		OFFICE SUPPLIES, PART I, SECTION C	No exceptions.
	7530	Stationery paper; drawing and tracing; graph; cross section; carbon; overlay; paperboard; waterproof; binder indexes; pressboard folders; labels; plastic sheets.	
75		OFFICE SUPPLIES, PART IV	No exceptions.
	7520	Rubber stamps.	
75		OFFICE SUPPLIES, PART V	No exceptions; however, plain envelopes for use in the District of Columbia shall be procured from GPO in accordance with title 44 U.S.C., section 225.
	7530	Envelopes, printed and plain.	
75		TABULATING CARDS, PART VIII	No exceptions.
	7530	Section A—(advertised): Tabulating cards.	
		Section B—(negotiated): Tabulating cards.	

FSC Group	Class	Title of schedule	Remarks
76		BOOKS, DICTIONARIES AND OTHER PUBLICATIONS, PART I.	No exceptions:
	7610	Books and pamphlets.	
	7640	Maps, atlases, charts and globes.	
76		LAW BOOKS AND TAX AND OTHER REGULATORY REPORTING PERIODICALS, PART II.	No exceptions:
	7610	Law books.	
	7630	Tax and other regulatory reporting periodicals:	
77		PHONOGRAPH RECORDS, PART I	No exceptions:
	7740	Phonograph records.	
78/84		RECREATION AND ATHLETIC EQUIPMENT PART I/ ATHLETIC FOOTWEAR AND CLOTHING, PART I.	Not mandatory on DOD for requirements within 8415 and 8430.
	7810	Athletic and sporting equipment.	
	7820	Games, toys and wheeled goods.	
	7830	Recreational and gymnastic equipment.	
	8415	Clothing, special purpose, athletic and recreational.	
	8430	Footwear, athletic and recreational.	
70		CLEANING EQUIPMENT AND SUPPLIES	Not mandatory on DOD for following items: 7010-985-0700; 7010-013-3218; 7010-013-3210; 7010-017-3744; 7010-002-3742; 7010-935-3905; 7010-928-8712; 7010-928-8714; 7010-891-2905; 7010-028-9586; 7010-891-7614; and 7010-224-7986.
	7010	Vacuum cleaners, parts and attachments:	
		Commercial and industrial.	
		Furnace.	
		Back-Pack.	
		Household.	
		Microstatic.	
		Litter.	
		Floor polishing and scrubbing machines: Parts and Attachments:	
		Cylindrical.	
		Rotary disk.	
		Baseboard.	
		Corner.	
		Steel wool floor polishing pads.	
	7910	Floor polishing and scrubbing brushes.	
81		PACKAGING AND PACKING BULK MATERIALS PART II, SECTIONS I AND II.	No exceptions.
	8135	Section I—Steel strapping flat; seals, steel strapping and edge protectors. Section II—Strapping, nonmetallic, flat, cord and synthetic plastic, seals for nonmetallic strapping; buckles for nonmetallic strapping.	

(b) *Mandatory in Washington, D.C. and contiguous area.*

FSC Group	Class	Title of schedule	Remarks
42		FIREFIGHTING EQUIPMENT, PART I	Not mandatory on DOD for firehose; o items 4210-251-7004; 4210-595-1782; 4210-720-1815; 4210-769-1845; 4210-889-2220; and 4210-973-1865.
	4210	Fire extinguishers, extinguishing agents (dry chemicals), extinguisher charges, and repair parts and accessories, firehose.	
67		PHOTOGRAPHIC EQUIPMENT, PART II, SECTION B	Mandatory on DOD for Items 19-1, 19-2, andr 19-6 only.
	6750	Photographic sensitized and chemical supplies.	
		Chemical preparation, developers, fixers.	
		Film and papers.	
		Films, photographic.	
		Paper, photographic.	
		Plates, Lantern-slide.	

FSC Group	FSC Class	Title of schedule	Remarks
68		CHEMICAL AND CHEMICAL PRODUCTS, PART III, SECTIONS A, B, AND C.	Items in section A mandatory on DOD except for items procured through Defense Personnel Support Center.
	6830	Gases: Compressed and liquefied (includes certain items in FSC 6505).	
87		AGRICULTURAL SUPPLIES, PART I	No exceptions.
	8710	Forage and feed.	
87		AGRICULTURAL SUPPLIES, PART II	No exceptions.
	8730	Seed.	
89		SUBSISTENCE, PART III	No exceptions.
	8960	Ice.	
Industrial Group		Sweeping cloth and wiping cloth service.	
721		(Rental) Formerly Industrial Group 103, Part IV.	

(c) *Mandatory in GSA areas other than Region 3.*

FSC Group	FSC Class	Title of schedule	Remarks
68		CHEMICALS AND CHEMICAL PRODUCTS, PART III, SECTIONS A, B, C, AND D.	Mandatory on DOD activities located within the specified GSA geographical area other than Region 3 except for items procured through the Defense Personnel Support Center.
	6505	Medical gases.	
	6830	Industrial gases; compressed and liquefied.	

§ 5.1108 Preparation and use of DD Form 448/448c (MIPR).

DD Forms 448 and 448c are substantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format (see §§ 2.200 and 3.500 of this chapter) to the extent feasible. If desired, each Department may overprint fixed repetitive information.

§ 5.1108-1 Special instructions.

* * * * *

(f) The requiring department shall initiate and forward DD Form 254, Contract Security Classification Specification when work or information in connection with a requested procurement requires safeguarding of classified defense information.

§ 5.1201-2 Exclusions—Defense Supply Agency and General Services Administration assignments.

* * * * *

(d) *Exclusions for local purchase of integrated materiel managed items.* Requiring Departments may purchase at their option any DSA or GSA centrally managed, commercially available item provided:

(1) in the case of an emergency requirement, such as a work stoppage, the purchase action is limited to immediate-use quantity; or

(2) in the case of routine requirements, the total line item value does not exceed $10 and local purchase is determined to be the most economical method of supply.

When an emergency purchase is made, one copy of the contractual instrument shall be forwarded promptly to the appropriate DSA Center or the GSA, Federal Supply Service, Procurement Operations Division (FPNP), Washington, D.C. 20406. A copy of the sales slip, delivery ticket or receipt document (e.g., Standard Form 1165) may be used to fulfill this requirement when purchase was accomplished by use of imprest funds or by call against a basic purchase agreement.

PART 6—FOREIGN PURCHASES

6. Sections 6.103-6, 6.103-7, 6.603-3, 6.603-4, and 6.605-2 are revised; § 6.605-3(d) is amended; §§ 6.605-4(a) and 6.704-2 are revised; in § 6.805-2(a)(8)(i) new (o) and (p) are added, and also subdivision (ii) of paragraph (a)(8) is revised, as follows:

§ 6.103-6 Panama Canal Zone.

(a) *Panamanian supplies for use in the Canal Zone.* In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed January 25, 1955, the Secretaries have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to articles, materials, or supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone.

(b) *Merchandise purchased for resale.* Merchandise (except gasoline) purchased by activities in the Canal Zone for resale in the Canal Zone, which originated in countries other than the United States and its possessions or the Republic of Panama, may be purchased only from a United States or Republic of Panama source which has paid all appropriate duties thereon.

§ 6.103-7 Commissary resale.

The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. Accordingly, notwithstanding § 6.103-2(c), approvals are not required for purchases for resale in domestic commissaries of brand-name subsistence items and fresh fruits and vegetables of foreign origin. Nonsubsistence items of foreign origin purchased for resale in domestic commissaries, although not subject to the Buy American Act restrictions, are subject to approval in accordance with § 6.103-2(c) ("Gold Flow Procedures").

§ 6.603-3 Contract clauses.

(a) *Duty-free entry for designated items.* Within the limits of § 6.603-2(a), the following clause shall be used where the contracting officer definitely knows at the time of execution of the contract that foreign supplies (other than those for which duty-free entry is to be accorded pursuant to a clause authorized by § 6.605), on which the estimated aggregate duty exceeds $1,000, are to be imported into the United States, its possessions, or Puerto Rico, in connection with performance of the contract.

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (FEBRUARY 1971)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry.

(b) The Contractor warrants that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents covering those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry, shall consign the shipments to the appropriate Military Department, in care of the particular Contractor including the Contractor's delivery address or the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in United States dollars.

(e) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (d) above and mark all packages U.S. Department of Defense to qualify for duty-free entry and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies identified in the schedule as supplies to be accorded duty-free entry. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the overseas supplier. The notice

shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the schedule delivery date(s).

(g) The Contractor will make appropriate provisions in subcontracts hereunder to assure that the entire substance of this clause is agreed to by each first- or lower-tier subcontractor, if any, who will import into the United States, its possessions, or Puerto Rico, supplies identified in the Schedule as supplies to be accorded duty-free entry.

When the Duty-Free Entry for Certain Specified Items clause is used, the following clause shall be inserted in the Schedule:

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (DECEMBER 1965)

In accordance with paragraph (a) of the clause hereof entitled "Duty-Free Entry for Certain Specified Items", the following supplies are hereby identified as supplies to be accorded duty-free entry:

(b) *Duty-free entry for items not identified in the contract.* Within the limits of § 6.603-2(a), the following clause shall be used unless the contracting officer anticipates that, in connection with the performance of the contract neither the prime contractor nor any first-tier subcontractor will make any purchase of foreign supplies in excess of $10,000 that would not be covered either by the clause in paragraph (a) of this section or by a clause authorized by § 6.605.

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (FEBRUARY 1971)

(a) Except as provided in paragraph (c) below, the Contractor shall notify the Contracting Officer in writing of any purchase in excess of $10,000 by the Contractor of foreign supplies (including without limitation raw materials, components, and intermediate assemblies) that are to be imported into the United States, its possessions, or Puerto Rico, for delivery to the Government, or for incorporation in end items to be delivered to the Government, under this contract; *Provided,* That if this contract contains any other clause providing for duty-free entry, such notice is not required for any supplies that are to be accorded duty-free entry under any other such clause. Any such notice shall be furnished to the Contracting Officer at least twenty (20) days before the importation of any supplies pursuant to any such purchase. The notice shall identify (i) the foreign supplies, (ii) the estimated amount of duty payable thereon, and (iii) the country of origin.

(b) If, within ten (10) days of receipt of any notice under (a) above, the Contracting Officer notifies the Contractor in writing that the Government will issue duty-free entry certificates for such foreign supplies, or if the Government otherwise tenders and the Contractor agrees to the issuance of such a duty-free entry certificate, the following subparagraphs shall apply:

(1) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause.

(2) The Contractor warrants that all such foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause are intended to be delivered to the Government or incorporated in end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(3) The Government agrees to execute duty-free certificates and to afford appropriate assistance in order to obtain the duty-free entry of such foreign supplies as to which, pursuant to subparagraph (4) below, the shipping documents bear the notation specified therein, except as the Contractor may otherwise agree.

(4) All shipping documents submitted to Customs, covering foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause shall consign the shipments to the appropriate (i) Military Department in care of the particular Contractor including the Contractor's delivery address, or (ii) the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(5) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (4) above and mark all packages U.S. Department of Defense to qualify for duty-free entry and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(6) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

§ 6.603-4 Customs entries and duty-free certificates.

(a) When a prime contract involving foreign supplies contains the clause set forth in § 6.603-3 (a) or (b) and the prime contractor sends a notification of a purchase of foreign supplies under the contract to the Contract Administration Office (CAO) designated in the contract, the CAO will verify that the prime contract includes the Duty-Free Entry for Certain Specified Items clause for the items identified or the Notice of Imports—Possible Duty-Free Entry clause; and in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for a reduction in contract price in the amount of duty which woud be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to the appropriate DCASR as follows: (1) Commander, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, MI 48211, for shipments arriving from Canada; (2) Commander, Defense Contract Administration Services Region, New York, 60 Hudson Street, New York, NY 10013, for shipments arriving from the European, African, and Middle Eastern areas west of 60° East Longitude and the area in the North Atlantic Ocean north of 30° North Latitude including Greenland and Iceland; (3) Commander, DCASR, Dallas, Merchandise Mart Building, 500 South Ervay Street, Dallas, TX 75201, for shipments arriving from the Mexican, Caribbean, Central and South American areas and that portion of the North Atlantic Ocean south of 30° North Latitude and west of 30° West Longitude; or (4) Commander, DCASR, San Francisco, 866 Malcolm Road, Burlingame, CA 94010, for shipments arriving from the Pacific area, Near East and that portion of the Middle East east of 60° East Longitude. The notification will be forwarded as an enclosure to the information provided in the format shown below.

To: Commander
DCSAR, _____,
Attention: Transportation Officer
Contract _____ issued to _____
(Contractor)

Enclosed is a contractor notification of the purchase of foreign supplies. Verification has been made that:

☐ The prime contract includes ASPR Clause 6-603.3(a) Duty-Free Entry for Certain Specified Items for the items identified on the enclosed notification.

☐ The prime contract includes ASPR Clause 6-603.3(b) Notice of Imports—Possible Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

The contract is expected to be completed by _____

Signature _____

Title _____

(b) For procedures applicable to Canadian supplies, see § 6.605-4(a).

(c) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses set forth in § 6.603-3 or authorized by § 6.605, the contractor shall be notified

that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(d) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with paragraph (e) of this section and forward two copies of Customs Form 7501 and one copy of Customs Form 7501A to the District Director of Customs submitting the request.

(e) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(1968 FEB)

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the (indicate Department of the Army, Department of the Navy, Department of the Air Force, or Defense Supply Agency) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name)

(Organization)

((Title), who has been designated to execute free entry certificates for the above named (Department or Agency))

§ 6.605–2 Contract clause.

Every contract in excess of $2,500 except construction contracts, that includes the procurement of end items contained in the list maintained by the Department concerned pursuant to § 6.103–5(a) shall include the following clause unless it is reasonably certain that no supplies will be imported from Canada by the contractor or any first- or lower-tier subcontractor in connection with the performance of the contract. The clause shall be included in invitations for bids or requests for proposals that are expected to lead to such a contract.

DUTY-FREE ENTRY—CANADIAN SUPPLIES (1971 FEB)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) All end items which constitute "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 his subcontract.

(b) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify the Director, Defense Contract Administration Services Region, Detroit, 1580 East Grand Blvd., Detroit, Mich. 48211, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of Canadian supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the Canadian supplier. The notice shall identify (1) the Canadian supplies, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of Canadian supplies in connection with this contract if (i) such Canadian supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

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 Listed supplies for unlisted end items.

* * * * *

(d) As to paragraph (h) of the clause, limiting the "flow-down" provision to subcontracts for supplies specifically identified in the Schedule, or, if appropriate, deleting the provision.

§ 6.605–4 Customs entries and duty-free certificates—Canadian supplies.

(a) Pursuant to the clause set forth in §§ 6.603–3(a), 6.603–3(b) or 6.605–2 (as may be modified in accordance with § 6.605–3), the Defense Contract Administration Services Region, Detroit, shall execute Customs Forms 7501 and 7501A and the duty-free entry certificate for imports from Canada which are to be accorded duty-free entry. Accordingly, when a prime contractor notifies the contract administration office designated in the contract of a purchase of Canadian supplies under the contract, the CAO will verify that the prime contract includes the Duty-Free Entry—Canadian Supplies clause, the Duty-Free Entry for Certain Specified Items clause for the items identified, or the Notice of Imports—Possible Duty-Free Entry clause; and, in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price in the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to DCASR, Detroit, as an enclosure to the information provided in the format shown below.

To: Commander, DCASR, Detroit, Attn: DCRD–PT.

Contract _____ issued to _____
(Contractor)

Enclosed is a contractor notification of the purchase of foreign supplies. Verification has been made that:

☐ The prime contract includes ASPR Clause 6–605.2 Duty-Free Entry—Canadian Supplies.

☐ The prime contract includes ASPR Clause 6–603.3(a) Duty-Free Entry for Certain Specified Items for the Items identified on the enclosed notification.

☐ The prime contract includes ASPR Clause 6–603.3(b) Notice of Imports—Possible Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

This contract is expected to be completed by _____

(Signature)

(Title)

* * * * *

§ 6.704–2 Department of Defense audit and records.

Contracts exempted under § 6.704–1 from the requirement for examination of records by the Comptroller General shall nevertheless include the Audit by Department of Defense clause set forth in § 7.104–41 of this chapter in accordance with the requirements of that paragraph. When the clause in § 7.104–41 (a) of this chapter is used, the second sentence of paragraph (c) shall be deleted.

§ 6.805–2 Procurement limitations.

(a) * * *

(8) *Miscellaneous exceptions.* (i) * * *

(*o*) Custodial services; and

(*p*) Other mandatory requirements for contractual services which by their nature can only be performed locally and where an organic capability does not exist.

(ii) Procurement of the requirements listed below: *Provided,* That foreign cost is estimated not to exceed $10,000:

(*a*) Services of part-time instructors;

(*b*) Printing of base newspapers;

(*c*) Dry ice; and

(*d*) Ready-mixed asphalt and portland cement concrete.

* * * * *

PART 7—CONTRACT CLAUSES

7. The table of contents to Part 7 is amended by adding a new Subpart Q; §§ 7.101 and 7.103–18(a) are amended; § 7.104–7 is added; §§ 7.104–12 and 7.104–15 are revised; § 7.104–18 is amended, §§ 7.104–29, 7.104–31, 7.104–32, 7.104–41 and 7.104–42 are revised; § 7.104–45 is added; §§ 7.104–51 and 7.104–59 are revised; § 7.105–3(b)(1) is amended and paragraph (c) is revised; §§ 7.202 and 7.203–4(c)(2) are amended; §§ 7.203–7, 7.203–29 and 7.204–12 are revised; §§ 7.204–33 and 7.204–36 are added; § 7.302–6 is amended; §§ 7.302–10, 7.302–25 and 7.303–28 are revised; §§ 7.303–35 and 7.303–48 are added; §§ 7.402–7 and 7.402–24 are amended; § 7.402–30 is revised; §§ 7.403–44 and 7.403–45 are added; § 7.504–1 is revised; § 7.603–44 is amended; § 7.605–11 is revised; § 7.605–15 is amended; § 7.606–12 is added; § 7.607–22 is revised; §§ 7.607–29 and 7.608–3 are added; in § 7.702–12 the title of the contract clause is amended; §§ 7.702–13 and 7.702–22 are revised; § 7.702–35 is amended; § 7.702–48 is revised; §§ 7.703–11 and 7.703–27 are amended; §§ 7.703–41, 7.704–5 and 7.704–33 are revised; § 7.705–23 is added; § 7.802–7 is revised; in § 7.901–4 the title of the contract clause is amended and a new paragraph (f) is inserted in the contract and former paragraphs (f)–(i) are redesignated (g)–(j) and the last sentence of this section is amended; §§ 7.901–16 and 7.901–17 are amended; §§ 7.902–19 and 7.902–33 are added; § 7.1002–21 is deleted and the section reserved; §§ 7.1002–22, 7.1003–10, 7.1202–1 and 7.1601–14 are revised; and a new Subpart Q is added, as follows:

§ 7.101 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation other than (1) purchase orders (but see §§ 7.104–15 and 7.104–16), (2) short form negotiated supply contracts (see § 16.102–2(c) of this chapter), (3) letter contracts, (4) notices of award, (5) general contracts for communication services and facilities and (6) supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation, or other form of price revision as covered in § 3.404 of this chapter; and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a facilities contract as defined in Part 13 of this chapter. However, there are supply contracts in which performance involves cost-reimbursement, construction, research and development, or other special factors. In such cases, see the particular subparts containing additional applicable clauses.

§ 7.103–18 Equal opportunity clause.

(a) *Government contracts.* The following clause shall be included in all contracts (and modifications thereof if the clause was not included in the original contract) unless exempted in accordance with § 12.805 of this chapter (see also § 12.804 of this chapter).

EQUAL OPPORTUNITY (APRIL 1971)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

* * * * *

§ 7.104–7 Contract schedule subline items not separately priced.

In accordance with ASPR 20–3304.2(c)(ii) and at the option of the contracting officer, the following clause may be inserted.

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITH HOLDING OF BILLING AND PAYMENT (NOVEMBER 1970)

If the unit price of any contract subline or exhibit subline item contained in the schedule of this contract is not separately priced ("NSP" entered as the unit price column) and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains a "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to technical data.

§ 7.104–12 Military security requirements.

Insert the following clause in all classified contracts (see § 1.201–34 of this chapter.) If the situation warrants

because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirement clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254 and, if applicable, 254c) in accordance with § 16.811 of this chapter and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (APRIL 1971)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

§ 7.104-15 Omnibus GAO audit clause.

Insert the clause set forth below in all contracts, unless excepted under § 6.704 or § 6.1001 of this chapter.

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (MARCH 1971)

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $2,500 (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for 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) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

§ 7.104-18 Priorities, allocations, and allotments.

In accordance with § 1.307-2, of this chapter insert the following clause.

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (APRIL 1971)

The Contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

§ 7.104-29 Price reduction for defective cost or pricing data.

(a) The following clause shall be inserted in negotiated contracts which when entered into exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In addition the contracting officer shall include this clause in other negotiated contracts for which he has obtained a Certificate of Current Cost or Pricing Data in accordance with § 3.807-3(a)(3) of this chapter in connection with the initial pricing of the contract, or for which he has obtained partial cost or pricing data in accordance with § 3.807-3 (e) of this chapter.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (JANUARY 1970)

If any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because:

(i) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) A subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii), or (iii) above, which was not accurate as submitted;

the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, Provided the actual subcontract price was not affected by defective cost or pricing data.

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor: *Provided*, That they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which when entered into exceed $100,000 except those containing the clause set forth in paragraph (a) of this section.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS (JANUARY 1970)

(a) This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in cost plus applicable profits in excess of $100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.

(b) If any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because:

(i) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) A subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii), or (iii) above, which was not accurate, as submitted;

the price shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data.

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor: *Provided*, That they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

§ 7.104-31 Duty-free entry.

(a) *Duty-free entry for designated items.* In accordance with § 6.603-3(a) of this chapter, insert the following clause.

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (FEBRUARY 1971)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry.

(b) The Contractor warrants that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents covering those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry, shall consign the shipments to the appropriate Military Department, in care of the particular Contractor including the Contractor's delivery address or the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (d) above and mark all packages United States Department of Defense to qualify for duty-free and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies identified in the schedule as supplies to be accorded duty-free entry. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the overseas supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(g) The Contractor will make appropriate provisions in subcontracts hereunder to assure that the entire substance of this clause is agreed to be each first- or lower-tier subcontractor, if any, who will import into the United States, its possessions, or Puerto Rico, supplies identified in the Schedule as supplies to be accorded duty-free entry.

(b) In accordance with § 6.603-3(b) of this chapter, insert the following clause.

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (FEBRUARY 1971)

(a) Except as provided in paragraph (c) below, the Contractor shall notify the Contracting Officer in writing of any purchase in excess of $10,000 by the Contractor of foreign supplies (including without limitation raw materials, components, and intermediate assemblies) that are to be imported into the United States, its possessions, or Puerto Rico, for delivery to the Government, or for incorporation in end items to be delivered to the Government, under this contract: *Provided*, That if this contract contains any other clause providing for duty-free entry, such notice is not required for any supplies that are to be accorded duty-free entry under any other such clause. Any such notice shall be furnished to the Contracting Officer at least twenty (20) days before the importation of any supplies pursuant to any such purchase. The notice shall identify (i) the foreign supplies, (ii) the estimated amount of duty payable thereon, and (iii) the country of origin.

(b) If, within ten (10) days of receipt of any notice under (a) above, the Contracting Officer notifies the Contractor in writing that the Government will issue duty-free entry certificates for such foreign supplies, or if the Government otherwise tenders and the Contractor agrees to the issuance of such a duty-free entry certificate, the following subparagraphs shall apply:

(1) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause.

(2) The Contractor warrants that all such foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause are intended to be delivered to the Government or incorporated in end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(3) The Government agrees to execute duty-free entry certificates and to afford appropriate assistance in order to obtain the duty-free entry of such foreign supplies as to which, pursuant to subparagraph (4) below, the shipping documents bear the notation specified therein, except as the Contractor may otherwise agree.

(4) All shipping documents submitted to Customs, covering foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause shall consign the shipments to the appropriate (i) Military Department in care of the particular Contractor including the Contractor's delivery address, or (ii) the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(5) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (4) above and mark all packages United States Department of Defense to qualify for duty-free entry and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(6) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (1) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial

business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

§ 7.104–32 Duty-free entry of listed Canadian supplies.

In accordance with § 6.605–2, of this chapter insert the following clause.

DUTY-FREE ENTRY—CANADIAN SUPPLIES (FEBRUARY 1971)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) All end items which constitute "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 his subcontract.

(b) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify the Director, Defense Contract Administration Services Region, Detroit, 1580 East Grand Blvd., Detroit, MI 48211, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate."

(iv) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) Estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of Canadian supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the Canadian supplier. The notice shall identify (i) the Canadian supplies, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of Canadian supplies in connection with this contract if (i) such Canadian supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

§ 7.104–41 Audit by Department of Defense.

(a) Insert the clause set forth below in all contracts other than contracts entered into by formal advertising which are not expected to exceed $100,000.

AUDIT BY DEPARTMENT OF DEFENSE (APRIL 1971)

(a) *General.* The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c), and (d) below.

(b) *Examinaton of Costs.* If this is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

(c) *Cost or Pricing Data.* If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the U.S. Government shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing or performance of such contract, change of modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding $100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the U.S. Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) *Reports.* If the Contractor is required to furnish Cost Information Reports (CIR) or Contract Fund Status Reports (CFSR), the Contracting Officer or his representatives shall have the right to examine books, records, documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) *Availability.* The materials described in (b), (c), and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of 3 years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of 3 years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "Disputes" clause of this contract, or litigation or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

(b) In the case of consolidated facilities contracts, facilities acquistion contracts and facilities use contracts, paragraph (b) of the clause should be amended to read:

(b) *Examination of Costs.* The Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (2) the use of, and charges for the use of, the facilities. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

§ 7.104–42 Subcontractor cost or pricing data.

(a) The following clause shall be inserted in all negotiated contracts expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The contracting officer may include this clause, with appropriate reduction in the dollar amounts included therein, in

other negotiated contracts where a Certificate of Current Cost or Pricing Data is required (see § 3.807-3(a)(3) of this chapter) in connection with initial pricing of the contract.

SUBCONTRACTOR COST OR PRICING DATA (JANUARY 1970)

(a) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds $100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000 when entered into.

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which exceed $100,000 other than those described in paragraph (a) of this section:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS (JANUARY 1970)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $100,000.

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

§ 7.104-45 Limitation of liability for defects.

(a) In accordance with § 1.330(b) of this chapter, insert the following clause:

LIMITATION OF LIABILITY FOR DEFECTS (FEBRUARY 1971)

(a) Except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) occurring after final acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply:

(i) To the extent that the Contractor carries insurance or has established a reserve for insurance covering his liability to the Government for such loss or damage;

(ii) When the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from fraud or gross negligence as amounts to fraud, on the part of any personnel of the Contractor; or

(iii) When the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who 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 this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract.

(b) In accordance with § 1.330(b) of this chapter in procurements of high dollar value items, insert the following clause in lieu of the clause in paragraph (a) of this section:

LIMITATION OF LIABILITY FOR DEFECTS—MAJOR ITEMS (FEBRUARY 1971)

(a) Notwithstanding any other provision of this contract, including specifically the "Inspection" clause and any "Warranty of Supplies," "Correction of Deficiency" or other warranty clause, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after final acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply:

(i) To the extent that the Contractor carries insurance or has established a reserve for insurance covering his liability to the Government for such loss or damage;

(ii) When the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from fraud or gross negligence as amounts to fraud, on the part of any personnel of the Contractor; or

(iii) When the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who 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 this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract.

(c) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair or replacement of any defect or deficiency in supplies delivered under this contract or to provide equivalent relief. If loss or damage has occurred and correction, repair or replacement is no longer feasible or desired by the Government, the Contractor shall pay to the Government the amount which it would have cost the Contractor to make such correction, repair or replacement before the loss or damage occurred or provide other equivalent relief.

§ 7.104-51 Production progress report.

In accordance with § 25.202 of this chapter, insert the following clause.

PRODUCTION PROGRESS REPORTS (APRIL 1971)

(a) The Contractor shall prepare and submit to the Contracting Officer Production Progress Reports in accordance with the instructions set forth elsewhere in this contract.

(b) During any delay in furnishing a Production Progress Report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding

$10,000 or 5 percent of the amount of this contract, whichever is less.

§ 7.104–59 Aluminum.

In accordance with § 1.327 of this chapter, insert the following clause.

REQUIRED SOURCE FOR ALUMINUM INGOT (APRIL 1971)

(a) As used in this clause (i) the term "aluminum products" means aluminum or aluminum alloy in its last commercial form delivered by the producer, mill, or foundry as an end item under this contract, or used to produce an end item under this contract, such as by way of example (but not limited to) wrought aluminum products; forgings and castings; rolled bar, rod, structural shapes, and bare wire; aluminum conductor steel reinforced and bare aluminum cable; insulated or covered wire or cable; extruded bar, rod, shapes and tube (extruded, drawn and welded tube); sheet, strip and plate; pig or ingot; granular or shot; slab; foil; and powder, flake or paste; and (ii) the term "supplier" includes vendors, materialmen, warehousemen, distributors or manufacturers of aluminum products or other items containing aluminum in any form.

(b) Except as provided in (c) below, the Contractor (or subcontractor or supplier, where applicable) shall purchase from the General Services Administration (GSA) a quantity of aluminum pig or ingot equal in weight to the gross weight of aluminum products constituting, or used in the production of, the items to be delivered under this contract. Such purchase shall be in accordance with the terms and conditions of sale prescribed therefor by GSA. Each order placed with GSA pursuant to this clause shall state that it is placed in accordance therewith and shall be sent to:

Director, Stockpile Disposal Division, Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

Aluminum purchased pursuant to this clause may be used in any manner the Contractor desires and need not be earmarked in any way after delivery to the Contractor, nor physically incorporated in the items to be delivered hereunder.

(c) To the extent the Contractor (or subcontractor or supplier, where applicable) places subcontracts or purchase orders for aluminum products or for items other than aluminum products and containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from the GSA. However, he agrees to incorporate this clause:

(i) In any such subcontract or purchase order for aluminum products in the total amount of $500 or more, or

(ii) In any such subcontract or purchase order in the total amount of $25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

(d) The requirements of this clause are not intended to preclude basic agreements or other arrangements between the parties to any contracts (subcontracts or purchase orders) subject to this clause that will permit reference in such contracts to the applicability of the requirements of this clause, without the need for physically incorporating this clause in its entirety in each affected subcontract or purchase order.

(e) In placing subcontracts and purchase orders subject to the clause, the Contractor and all subcontractors and suppliers are authorized and encouraged to consolidate aluminum product purchases hereunder with other defense rated order purchases (ACM, DO, or DX) and other identifiable Government orders so as to apply the requirements of this clause to the total purchase. Otherwise, it is required either that aluminum product purchases subject to this clause be separately made, or, if consolidated with other aluminum product purchases, that the quantities (by weights) of aluminum products subject to this clause be separately set forth in the purchase document and identified as subject to this clause.

(f) Required purchases of aluminum from GSA by Contractors, subcontractors, or suppliers, shall be made within 90 days from the date (i) of final delivery pursuant to a contract, subcontract, or purchase order containing the requirements of this clause, or (ii) when the Contractor, subcontractor or supplier, has completed deliveries of aluminum products aggregating 100,000 pounds, whichever is earlier: *Provided, however,* That any Contractor, subcontractor or supplier, may defer required purchases of aluminum for the purpose of consolidating purchases to meet the requirement of two or more contracts, subcontracts, or purchase orders containing this clause until 90 days after the aggregate purchase requirements of such contracts, subcontracts or purchase orders equal the minimum order quantities established by GSA (approximately 10,000 pounds or more). Successive consolidated purchases thereafter may be made at any time within 90-day intervals. The 90-day limitations may be extended upon approval in writing by the GSA.

(g) Certain producers of aluminum have entered into contracts with GSA effective as of November 1, 1965 under which they have made long-term commitments to purchase certain minimum and maximum quantities of aluminum from that Agency. The obligations of such producers under this clause shall be governed by the provisions of those contracts to the extent of any inconsistency.

(h) All purchases made pursuant to this clause, other than from GSA, which are rated (ACM, DO, or DX) in accordance with DMS Regulation 1, DMS Order 3, and DPS Regulation 1, are subject to the provisions of those regulations concerning the maintenance of records, rights of inspection and audit, and the penalty provisions contained therein for willful noncompliance.

§ 7.105–3 Stop work orders.

* * * * *

(b) *Use of orders.* (1) Inasmuch as stop work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only with prior approval at a level above the contracting officer. Generally, use of a stop work order will be limited to those situations where it is advisable to suspend work pending such a decision by the Government and a supplemental agreement providing for such suspension is not feasible. A stop work order will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

* * * * *

(c) *Clause.*

STOP WORK ORDER (APRIL 1971)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) [1] days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) [1] days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) Cancel the stop work order, or

(ii) Terminate the work covered by such order as provided in the "Default" or the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if—

(i) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage: *Provided,* That, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(d) If a stop work order is not canceled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

§ 7.202 Applicability.

As used in this subpart, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, notice of award, or a supplemental agreement to a contract which does not effect a new procurement) entered into on a cost reimbursement basis as covered in § 3.405 of this chapter for supplies other than (a) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property; (b) experimental, developmental, or research work; (c) facilities to be provided by the Government under a "facilities contract" as defined in § 7.701 and Part 13 of this chapter or (d) general contracts for communication services and facilities.

§ 7.203–4 Allowable cost, fee, and payment.

* * * * *

(c) * * *

(2) In paragraph (f)(ii)(B) of the foregoing clauses, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* That a corresponding increase is made in the period of retention of records required in

[1] The clause may provide for less than 90 days.

paragraph (d) of the clause set forth in § 7.104–15.

* * * * *

§ 7.203–7 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.203–29 Audit by Department of Defense.

Insert the clause set forth in § 7.104–41(a).

§ 7.204–12 Military security requirements.

In accordance with § 7.104–12, insert the clause set forth therein, deleting paragraphs (c) and (d) and substituting the following:

(c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or time required for performance of this contract, the estimated cost, fee, delivery schedule, or any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause. (April 1971)

§ 7.204–33 Limitation of liability for defects.

In accordance with § 1.330(b) of this chapter, insert the appropriate clause set forth in § 7.104–45.

§ 7.204–36 Aircraft, missile, and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.302–6 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.302–10 Termination for convenience of the government.

(a) In accordance with § 8.701 of this chapter insert the clause set forth in § 7.103–21(c).

(b) In accordance with § 8.704 of this chapter, insert the following clause, except that in the case of organizations other than educational institutions, paragraph (d) shall be deleted and the paragraph in (c) below shall be used.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (APRIL 1971)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claim arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in section XV, part 3, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) Completed or partially completed plans, drawings and information; and

(ii) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(c) The following paragraph shall be used in place of (d) in the above clause when the contract is with a nonprofit organization other than an educational institution.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(d) The clause in paragraph (b) of this section suitably altered to indicate the relationship between the prime contractor and subcontractor is suggested for use in subcontracts placed with educational institutions and when modified as prescribed in paragraph (c) of this section for use with other nonprofit institutions: *Provided,* Such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Part 15 of this chapter: *And provided further,* Such subcontracts are placed on the no-fee or no-profit basis.

§ 7.302–25 Military security requirements.

Insert the Military Security Requirements clause in accordance with § 7.104–12.

§ 7.303–28 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.303–35 Limitation of liability for defects.

In accordance with § 1.330(b) of this chapter, insert the appropriate clause set forth in § 7.104–45.

§ 7.303–48 Aircraft, missile and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.402–7 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein. In the case of research and development contracts with nonprofit institutions and subcontracts thereunder, and pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to said clause.

§ 7.402–24 Military security requirements.

Insert the clause set forth in § 7.104–12, modified in accordance with § 7.204–12.

§ 7.402–30 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.403–44 Limitation of liability for defects.

In accordance with § 1.330(b) of this chapter, insert the appropriate clause set forth in § 7.104–45.

§ 7.403–45 Aircraft, missile, and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.504–1 Military security requirements.

(a) Except as provided in paragraph (b) of this section, insert the Military Security Requirements clause in accordance with § 7.104–12.

(b) In any cost reimbursement type contract, insert the Military Security Requirements clause in accordance with § 7.204–12.

§ 7.603–44 Aluminum.

In accordance with § 1.327 of this chapter, insert the clause set forth in § 7.104–59 modified by deletion of paragraph (c) thereof and substitution of the following paragraph.

(c) To the extent the Contractor or subcontractor or supplier, where applicable places subcontracts or purchase orders for aluminum products, or for items other than aluminum products and containing aluminum in any form, or for construction where the subcontractor is to furnish materials containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from the GSA. However, he agrees to incorporate this clause:

(i) In any such subcontract or purchase order for aluminum products in the total amount of $500 or more, or

(ii) In any such subcontract or purchase order in the total amount of $25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more, or

(iii) Construction, where the materials are to be supplied by the subcontractor and the total value of such materials containing aluminum (in any form) is estimated to be $25,000 or more, and where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

§ 7.605–11 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.605–15 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.606–12 Aircraft, missile, and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.607–22 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.607–29 Responsibility of the Architect-Engineer.

RESPONSIBILITY OF THE ARCHITECT-ENGINEER (AUGUST 1970)

(a) The Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect-Engineer under this contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Architect-Engineer shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Architect-Engineer's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

§ 7.608–3 Redesign responsibility.

(a) Insert the following clause in all Architect-Engineer contracts except (1) those involving projects for which the Head of Procuring Activity or his designee determines that cost limitations are secondary to performance considerations and that additional funding can be expected if necessary, and (2) those for the design of a standard structure which is not intended for a specific location site.

DESIGN WITHIN FUNDING LIMITATIONS (APRIL 1971)

(a) The Architect-Engineer shall accomplish the design services required under this contract so as to permit the award of a contract, pursuant to standard Department of Defense procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in this contract. When bids or proposals for the construction contract are received which exceed such estimated price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the perform such additional services at no cost to the Government if the unfavorable bids or Architect-Engineer shall not be required to proposals are the result of conditions beyond his reasonable control.

(b) The Architect-Engineer will promptly advise the Contracting Officer if he finds that the project being designed will exceed or is likely to exceed the funding limitations and he is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Architect-Engineer's revised estimate of construction cost. The Contracting Officer may, if he determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth elsewhere in the contract, or he may adjust such estimated construction contract price. When bids or proposals are not solicited or where they are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.

(b) Whenever the clause set forth in paragraph (a) of this section is included in a contract, the statement set out below shall be inserted in the description of the work to be performed by the Architect-Engineer.

The estimated construction contract price for the project described herein is $_____.

The figure to be inserted in this statement is to be established at the beginning of contract negotiations by agreement between the Architect-Engineer and the Government. Such estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the figure to be inserted, the Contracting Officer should make available to the Architect-Engineer the information upon which the Government has based its initial estimate and any subsequently acquired information which may affect the construction cost.

§ 7.702–12 Use and charges.

USE AND CHARGES (APRIL 1971)

* * * * *

§7.702–13 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.702–22 Termination of work.

TERMINATION OF WORK (APRIL 1971)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work

under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work in performance of the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) Transferred title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government—

(A) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect to the performance of, the work terminated by the Notice of Termination; and

(B) The completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor—

(A) Shall not be required to extend credit to any purchaser, and

(B) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, in effect as of the date of this contract, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VII of the Armed Services Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract; and

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(f) Costs claimed, agreed to, or determined pursuant to (c), (d) and (e) hereof shall be in accordance with the section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted: (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by a Notice of Termination under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits by reason of a Notice of Termination issued pursuant to this clause.

In accordance with § 163.119 of this chapter, the last sentence of paragraph (i) in the above clause may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 7.702–35 Utilization of labor surplus area concerns.

In accordance with § 1.805–3(a) of this chapter, insert the clause set forth in § 7.104–20(a).

§ 7.702–48 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein as amended by § 7.104–41(b).

§ 7.703–11 Examination of records.

In accordance with § 7.104–15, insert the clauses set forth therein.

§ 7.703–27 Utilization of labor surplus area concerns.

In accordance with § 1.805–3(a) of this chapter, insert the clause set forth in § 7.104–20(a).

§ 7.703–41 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein as amended by § 7.104–41(b).

§ 7.704–5 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.704–33 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein as amended by § 7.104–41(b).

§ 7.705–23 Aircraft, missile, and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.802–7 Audit by Department of Defense.

Insert the clause set forth in § 7.104–41(a).

§ 7.901–4 Termination.

TERMINATION (APRIL 1971)

* * * * *

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the "Disputes" clause of this contract, from any determination made by the Contracting Officer under paragraphs (c) or (e), above, except that if the Contractor has failed within the time provided in paragraph (c), above, to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e), above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder, or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the hourly rates for direct labor hours with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government under such terms and conditions as it prescribes may make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract, whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of six (6) percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

In accordance with § 163.119 of this chapter, the last sentence of paragraph (j) in the above clause may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 7.901–16 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.901–17 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein.

§ 7.902–19 Limitation of liability for defects.

In accordance with § 1.330(b) of this chapter, insert the appropriate clause set forth in § 7.104–45.

§ 7.902–33 Aircraft, missile, and space vehicle accident reporting and investigation.

In accordance with § 7.104–81, insert the clause set forth therein.

§ 7.1002–21 [Reserved]

§ 7.1002–22 Examination of records.

In accordance with § 7.104–15, insert the clause set forth therein except in contracts of the type described in § 7.502.

§ 7.1003–10 Audit by Department of Defense.

In accordance with § 7.104–41(a), insert the clause set forth therein.

§ 7.1202–1 Examination of records.

In accordance with the instructions in § 7.104–15, insert the clause set forth therein.

§ 7.1601–14 Liability.

LIABILITY (OCTOBER 1970)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after the time the owner discovers loss of or damage to his property or the time he shall have discovered such loss or damage had he exercised due diligence, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) *Nonnegligent Damage.* The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents (60¢) per pound per article.

(ii) *Negligent Damage.* When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

Subpart Q—Clauses for Communication Service Contracts

Sec.	
7.1700	Scope of subpart.
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Sec.
7.1702-7 Facilities and services to be furnished.
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7.1703-5 Subcontracts.

AUTHORITY: The provisions of this Subpart Q issued under secs. 2202, 2301-2314, 70A Stat. 120, 127-133; 10 U.S.C. 2202, 2301-2314.

Subpart Q—Clauses for Communication Service Contracts

§ 7.1700 Scope of subpart.

This subpart prescribes clauses for "General Contracts" with common carriers and with noncommon carriers under which communication services and facilities will be ordered pursuant to Part 22, Subpart J, of this chapter.

§ 7.1701 Required clauses.

The following clauses shall be inserted in all "General Contracts" for communication services and facilities. With the exception of the clauses prescribed by §§ 7.1701-1 through 7.1701-15, the clauses prescribed by this section may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

§ 7.1701-1 Definitions.

Insert the clause in § 7.103-1 with the following additional paragraphs:

(d) The term "Communication Service Authorization" (CSA) means an order for services or facilities under this contract.

(e) The term "Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating pursuant to State authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this contract. (April 1971)

§ 7.1701-2 Assignment of claims.

Insert the clause in §7.103-8.

§ 7.1701-3 Disputes.

Insert the appropriate clause in § 7.103-12, with the following additional paragraph in contracts with common carriers.

(c) The provisions of (a) above shall not apply to disputes which are subject to the jurisdiction of an appropriate governmental regulatory body. The provisions of (a) above also shall be subject to the requirements of the law with respect to the rendering of communication services and the collection of tariff charges. (April 1971)

§ 7.1701-4 Officials not to benefit.

Insert the clause in § 7.103-19.

§ 7.1701-5 Covenant against contingent fees.

Insert the clause in § 7.103-20.

§ 7.1701-6 Notice to the Government of labor disputes.

Insert the clause in § 7.104-4.

§ 7.1701-7 Military security requirements.

Insert the clause in § 7.104-12.

§ 7.1701-8 Examination of records.

Insert the clause in § 7.104-15.

§ 7.1701-9 Gratuities.

Insert the clause in § 7.104-16.

§ 7.1701-10 Patent indemnity.

Insert the clause in § 9.103-1 of this chapter, designating the text thereof as paragraph (a) and adding the following as (b):

(b) This clause shall apply only to individual CSAs over $5,000 issued under this contract and covering those communications services and facilities which normally are or have been sold or offered for sale by the Contractor to the public, or which can be provided over commercially available equipment, or which involve relatively minor modifications thereto. (April 1971)

§ 7.1701-11 Notice and assistance regarding patent infringement.

Insert the clause in § 9.104 of this chapter.

§ 7.1701-12 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the clause set forth therein. In contracts with common carriers, revise the clause by deleting the date of the clause and by substituting the following for the first three lines of the clause:

When the response to a solicitation for special construction or special assembly under this contract contains costs or charges for royalties totaling more than $250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:

§ 7.1701-13 Convict labor.

Insert the clause in § 12.203 of this chapter.

§ 7.1701-14 Contract work hours standards act—overtime compensation.

Insert the clause in § 12.303 of this chapter.

§ 7.1701-15 Equal employment opportunity.

Insert the clause in § 12.804 of this chapter.

§ 7.1701-16 Access.

ACCESS (APRIL 1971)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to contractor furnished facilities: *Provided*, That if by reason of military necessity the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when Contractor access is not permitted, cost attributable to loss of or damage to the equipment due to the fault or negligence of the Government shall be reimbursed to the Contractor at mutually acceptable rates. Failure to agree shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

§ 7.1701-17 Amendment of contract.

AMENDMENT OF CONTRACT (APRIL 1971)

Upon thirty (30) days' written notice, either party may request reconsideration of this contract for the purpose of revision to conform with requirements of law or to provide for mutually acceptable changes.

§ 7.1701-18 Obligation of the Government.

OBLIGATION OF THE GOVERNMENT (APRIL 1971)

The Government incurs no monetary liability under this instrument. The Government's liability shall arise, if appropriate, upon the issuance of a CSA pursuant to the terms of this instrument.

§ 7.1702 Clauses to be used when applicable.

With the exception of the clauses prescribed by §§ 7.1702-1 through 7.1702-5, 7.1702-14(b), and § 7.1702-15(b), the clauses prescribed by this section may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

§ 7.1702-1 Utilization of small business concerns.

In accordance with the requirements of § 1.707-3(a) of this chapter, insert the clause set forth therein.

§ 7.1702-2 Buy American act.

In accordance with the requirements of § 6.104-5 of this chapter, insert the clause set forth therein.

§ 7.1702-3 Approval of contract.

When the contract requires manual approval prior to becoming effective, insert the clause set forth in § 7.105-2.

§ 7.1702-4 Patent rights (license).

In accordance with the requirements of § 9.107-5(b) of this chapter, insert the clause set forth therein.

§ 7.1702-5 Authorization and consent.

(a) Insert the following clause in contracts with common carriers.

AUTHORIZATION AND CONSENT (COMMON CARRIERS) (APRIL 1971)

The Government hereby gives authorization and consent (without prejudice to its rights of indemnification, if these rights are provided for in this contract) for all use and manufacture, in the performance of any order placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a governmental regulatory body, or any

part thereof or any amendments thereto or any subcontract thereunder (including any lower-tier subcontract), of any United States patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (A) specifications or written provisions now or hereafter forming a part of this contract, or (B) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) Insert the clause in § 7.103–22 in contracts with noncommon carriers.

§ 7.1702–6 Continuation of orders.

When a communication services contract supersedes another and it is desired to transfer outstanding orders to the new contract, insert the following clause:

CONTINUATION OF ORDERS (APRIL 1971)

All orders heretofore issued by _____ under Contract Number _____, dated _____ _____, are transferred to this contract and shall continue in full force and effect as though placed under this contract. Orders currently in effect which were heretofore issued by the above Department under other contracts of that Department with the Contractor may likewise be transferred to this contract.

§ 7.1702–7 Facilities and services to be furnished.

Insert the following clause in contracts with common carriers:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (APRIL 1971)

(a) The Contractor shall furnish any classes of services or facilities that he offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, such services may be ordered in the manner provided in the clause entitled "Ordering of Facilities and Services." These may include the engineering, installation, alteration or maintenance of facilities owned either by the Contractor or by the Government, and may be located on or off Government premises or at any of its establishments.

(c) The Contractor agrees to interconnect his facilities with any Government-owned or furnished communications equipment, facilities or transmission media, in accordance with established technical criteria for assuring continuity of service and/or traffic without damage to or degradation of commercial facilities, upon request of the Contracting Officer.

§ 7.1702–8 Ordering of facilities and services.

Insert the following clause in contracts with common carriers:

ORDERING OF FACILITIES AND SERVICES—COMMON CARRIERS (APRIL 1971)

All services and facilities furnished, as provided in the clause entitled "Facilities and Services To Be Furnished—Common Carriers" shall be ordered by the Contracting Officer on numbered CSAs referring to this contract and specifying the services and facilities desired, the premises involved, the address where bills for service shall be sent, the Disbursing Officer, and any other pertinent details. Acceptance of orders by the Contractor shall be acknowledged by (i) commencing performance or (ii) written acceptance by a duly authorized representative. The Contractor shall sign and promptly return the order to the Government when required by the Contracting Officer. Orders pursuant to this clause which are unacceptable to the Contractor shall be returned to the Contracting Officer within _____ days of receipt stating the reasons therefor.

§ 7.1702–9 Rates, charges, and services—common carriers.

Insert the following clause in contracts with common carriers:

RATES, CHARGES AND SERVICES—COMMON CARRIERS (APRIL 1971)

(a) The services and facilities furnished hereunder shall be in accordance with all applicable tariffs, rates, charges, rules, regulations, or requirements (i) lawfully established by an appropriate governmental regulatory body; and (ii) applicable to service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of an appropriate governmental regulatory body. For nontariffed services which are furnished, the Government shall be charged at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(b) Recurring charges for services and facilities furnished under this contract shall, in each case, commence with satisfactory establishment of service or provision of facilities or equipments and are payable monthly in arrears.

(c) Subject to the "Cancellation or Termination of Orders—Common Carriers" clause, the Government may discontinue the use of any service or facilities furnished hereunder at any time. Upon discontinuance, the Government shall pay to the Contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(d) Expediting charges are expenditures necessary to secure services earlier than those services normally would be provided, such as costs of overtime pay, or special shipment. Expediting charges shall be paid only when (i) payment thereof is provided for in the tariff established by an appropriate regulatory authority or (ii) such charges are specially authorized in an expediting CSA. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor.

(e) When the services normally provided are technically unacceptable and the requirement necessitates the development, fabrication or manufacture of special equipment, the Government may provide such equipment or may direct the Contractor to procure the equipment or facilities upon a competitive basis to the extent practicable.

(f) If at any time the Government defers or changes its orders for any of the services hereunder but does not cancel or terminate them, the amount paid or payable to the Contractor for providing the services deferred or modified shall be equitably adjusted in accordance with applicable tariffs filed by the Contractor with the regulatory commission and in effect at the time of the deferral or change or, if no tariffs are in effect, by written agreement between the Government and the Contractor. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

§ 7.1702–10 Payment.

(a) Insert the following clause in each contract with common carriers.

PAYMENT—COMMON CARRIER (APRIL 1971)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the provisions of CSAs issued under this contract, the rates and charges for such services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(b) Insert the clause in § 7.103–7 in contracts with noncommon carriers.

§ 7.1702–11 Tariff information.

Insert the following clause in contracts with common carriers.

TARIFF INFORMATION (APRIL 1971)

(a) A copy of the Contractor's current existing tariffs (including changes) shall be furnished promptly to the Contracting Officer upon request. As early as possible prior to the filing of any application to a Federal, State or any other regulatory agency seeking the establishment of, or changes in, rates, charges, services, or any other regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, the Contractor shall notify the Contracting Officer thereof and shall furnish a copy of the application. Upon request therefor, the Contractor shall furnish a copy of all information, material and data developed or prepared in support of or in connection with such application.

(b) The Contractor also shall notify the Contracting Officer of any such application which may be filed with an appropriate governmental regulatory body by anyone other than the Contractor which affects or will affect the rate or conditions of services rendered or to be rendered promptly after the Contractor himself learns of that application. The foregoing requirements shall apply also to all such applications pending on the effective date of this contract.

§ 7.1702–12 Cancellation or termination of orders—common carriers.

Insert the following clause in all contracts with common carriers.

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (APRIL 1971)

(a) In the event the Government cancels, in whole or in part, any of the services which the Contractor is requested to provide under this contract, prior to the time such services are made available to the Government, or in the event that the Government terminates any of these services, in whole or in part, after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs which the Contractor has reasonably incurred in specially providing facilities and equipment the use of which is canceled or terminated and for which the Contractor has no foreseeable reuse. The amount of reimbursement shall be determined in the manner set forth in (b), (c), or (d) below.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this contract, in whole or in part, shall be determined

in accordance with applicable tariffs governing cancellation and termination charges which are filed by the Contractor with an appropriate governmental regulatory body and are in effect on the date of termination, and which provide specific cancellation or termination charges for the facilities and equipment involved or set forth the manner in which such charges will be determined.

(c) The amount of the Government's liability upon cancellation or termination, in whole or in part, of any of the services ordered under this contract, which are not subject to an appropriate governmental regulatory body, shall be determined in accordance with a mutually agreed schedule as contained in the applicable Communication Services Authorization.

(d) If no such applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA, the Government's liability shall be determined at the time of cancellation or termination of the facilities and equipment in accordance with the following settlement procedures:

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as he may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the "Basic Cancellation or Termination Liability" for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use his best efforts to sell such property or facilities when the Contractor has not foreseeable reuse or when the Department has not exercised its option to take title under the clause entitled "Title to Communications Facilities and Equipment." Any proceeds of such sale shall be applied in reduction of any payments to be made by the Government to the Contractor under a cancellation or termination settlement.

(3) Actual nonrecoverable costs shall be recorded in accordance with the established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, in accordance with generally accepted accounting procedures applicable to the provision of communication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) except any such costs for which the Government may have directly reimbursed the Contractor under the clause entitled "Special Construction and Equipment Charges." From the Contractor's installed cost, there shall be deducted the net salvage value (salvage value less cost of removal). In determining such net salvage, due consideration shall be given to foreseeable reuse by the Contractor of the facilities and equipment and due allowance shall be made for the cost of dismantling, removal, reconditioning and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The "Basic Cancellation Liability" is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are canceled. The "Basic Termination Liability" is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. The liability period shall be established as mutually agreed to but will not exceed ten (10) years.

(6) When the "Basic Cancellation or Termination Liability" established by the CSA is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value thereof.

(8) The Contractor agrees that in no event shall any costs be included which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and no cancellation or termination charge shall be made if such charge is not ordinarily made by the Contractor with respect to similar facilities or equipment furnished under similar circumstances.

(e) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of the cancellation or termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

§ 7.1702–13 Reuse arrangements.

Insert the following clause in contracts with common carriers.

REUSE ARRANGEMENTS (APRIL 1971)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that communications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge. The "Basic Termination Liability" applicable to the facilities or equipment in their former location shall continue to apply to the facilities or equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse-in-place of canceled or terminated facilities or equipment, no charge shall apply and the basic cancellation or termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

§ 7.1702–14 Cost or pricing data.

(a) (1) Insert the following clause in contracts with common carriers.

SUBMISSION OF COST OR PRICING DATA—COMMON CARRIERS (APRIL 1971)

The Contractor agrees to provide certified cost or pricing data, as requested by the Contracting Officer whenever:

(i) The services are nontariffed services;

(ii) A tariff, whether filed or contemplated to be filed, is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(iii) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(iv) More than one commercial source (one or more of which is a common carrier) can offer the desired service but price competition is not considered adequate;

(v) Required to support the reasonableness of special assembly rates and charges;

(vi) Required to support the reasonableness of special construction and equipment charges;

(vii) Required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(viii) Required to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(2) In contracts with common carriers for which certified cost or pricing data are or may be required, insert the appropriate clauses set forth in § 7.104–29 (Price Reduction for Defective Cost or Pricing Data) and § 7.104–42 (Subcontractor Cost and Pricing Data).

(b) In contracts with noncommon carriers, insert the appropriate clauses set forth in § 7.104–29 (Price Reduction for Defective Cost or Pricing Data) and § 7.104–42 (Subcontractor Cost and Pricing Data).

§ 7.1702–15 Audit and records.

(a) Insert the following clause in contracts with common carriers.

AUDIT AND RECORDS—COMMON CARRIERS (APRIL 1971)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "Provision of Cost or Pricing Data—Common Carrier," the Contracting Officer or his authorized representative shall, (i) until the expiration of three (3) years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge, or (ii) until the expiration of the period of contingent liability with respect to such contingent liability, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of the certification of the data.

(b) The Contractor shall maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct

and indirect costs which were the basis for the pricing of the CSA. The foregoing constitute "Records" for the purpose of this clause.

(c) The Contractor shall insert the substance of this clause in subcontracts awarded hereunder which furnish the basis for charges referred to in (a) hereof, unless its omission is authorized by the Contracting Officer.

(b) In accordance with the requirements of § 7.104–41, insert the appropriate clause set forth therein in contracts with noncommon carriers.

§ 7.1702–16 Term and termination of contract.

Insert the following clause in contracts with common carriers.

TERM AND TERMINATION OF CONTRACT—COMMON CARRIERS (APRIL 1971)

This contract shall be effective for an initial term commencing _____,* and ending June 30, 19 ____,** and shall continue in force thereafter from year to year, unless and until terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other. Termination shall be applicable prospectively only and shall not operate as a cancellation of any orders previously issued or outstanding.

§ 7.1703 Clauses to be used when special construction charges are expected.

Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by § § 7.1703–1 and 7.1703–2, the clauses prescribed by this section may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

§ 7.1703–1 Labor standards for construction work.

Except as provided in § § 18.703–3 and 18.703–4 of this chapter when the special construction involves construction (as defined in § 18.101–1 of this chapter) of a public building or public work, and under § 12.106 of this chapter the construction labor standards are applicable insert the clause in § 7.705–5.

§ 7.1703–2 Buy American—construction contracts.

In accordance with § 18.509–5 of this chapter, insert the clause therein whenever the contract involves construction (as defined in § 18.101–1 of this chapter).

* Insert the effective date of the contract.
** Insert the current fiscal year.

§ 7.1703–3 Special construction and equipment charges.

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (APRIL 1971)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilties or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a concellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

§ 7.1703–4 Title to communication facilities and equipment.

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (APRIL 1971)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

§ 7.1703–5 Subcontracts.

In accordance with the requirements of § 23.201 of this chapter, insert an appropriate clause entitled Subcontracts.

PART 8—TERMINATION OF CONTRACTS

8. Section 8.206–2 is revised; and § 8.704–2 is amended, as follows:

§ 8.206–2 Release of excess funds.

An estimate of funds required to settle the termination claim will be made by the TCO at the earliest practicable date. Except in cases where (a) the contract price of items terminated is $1,000 or less, or (b) the estimated amount of excess funds available is $1,000 or less, funds obligated under the contract in excess of an estimated amount required for settlement will be released to the purchasing office within 30 days after receipt of the termination notice by the TCO. Amounts of less than $1,000 shall be released upon request from the purchasing office. Continuous surveillance of required funds will be maintained by the TCO to permit timely release of any additional excess funds. In all cases, funds will be released within 10 days after the amount required for settlement has been determined by the TCO. A recommended format for release of excess funds is in § 8.807. If it appears that the previous releases of excess funds have resulted in a shortage of the amount which will be required for settlement, the TCO will inform the purchasing office and request by letter the reinstatement of funds, which will be provided within 30 days thereafter.

§ 8.704–2 Suggested clause for subcontracts.

The clause in § 8.704–1, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions: *Provided,* Such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Part 15 of this chapter: *And provided further,* Such subcontracts are placed on the no-fee or no-profit basis.

PART 9—PATENTS, DATA, AND COPYRIGHTS

9. In § 9.106 the introductory text is amended; and § 9.106–1 the title of this section is revised, as follows:

§ 9.106 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interests of national security. Accordingly, except as otherwise provided in § 9.106–2, the following clause shall be included in every classified contract (see §§ 1.201.34 and 1.320 of this chapter).

* * * * *

§ 9.106–1 Patent applications.

* * * * *

PART 10—BONDS, INSURANCE, AND INDEMNIFICATION

10. Section 10.103–5 is added; and § 10.502(c) is amended, as follows:

§ 10.103–5 Requirements and indefinite quantity contracts.

In requirements type contracts, for purposes of determination of the penal sum of bonds, the contract price will be deemed to be the price payable for the estimated quantity. In indefinite quantity contracts, the contract price will be deemed to be the price payable for the specified minimum quantity. When such estimated or minimum quantities are exceeded, §§ 10.103–1(b) and 10.103–2(b) will be applied.

§ 10.502 Self-insurance.

* * * * *

(c) The schedule of each contract containing the clause in paragraph (b) of this section shall contain (1) the estimated cost for war hazard losses, (2) the clause at § 7.203–4(a) of this chapter appropriately limited to cover allowable war hazard cost, (3) the Examination of Records clause (§ 7.104–15 of this chapter), and (4) an entry similar to the following.

The portion of this contract providing for the Contractor to afford protection to his employees and subcontractors to their employees against war hazard risks (see the clauses entitled Reimbursement for War Hazard Losses and Workmen's Compensation and War Hazard Insurance Overseas) is on a cost-reimbursement, no fee basis, notwithstanding the basis of the remainder of the contract.

* * * * *

PART 11—FEDERAL, STATE AND LOCAL TAXES

11. Section 11.203 is revised, as follows:

§ 11.203 Supplies and services for the exclusive use of the United States.

By virtue of action taken by the Secretary of the Treasury, pursuant to section 4293 of the Internal Revenue Code, exemption is available and shall be obtained, to the extent indicated, from the Federal excise tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government. Such exemption is obtained without any exemption certificate.

PART 12—LABOR

12. The table of contents of Part 12 is amended by revising the subject of Subpart H; § 12.107 is revised; the subject of Subpart H is revised; §§ 12.801(c) and 12.802(m), (n), (o) and (p) are added; § 12.803(f) is revised; §§ 12.804, 12.805, 12.806, and 12.807 are revised; §§ 12.807–1, 12.807–2 and 12.807–3 are added; §§ 12.808, 12.808–1, 12.808–2, 12.808–3, 12.809, 12.810, 12.811, 12.812, and 12.813 are revised; §§ 12.813–1 and 12.813–2 are added; § 12.814 is revised; and §§ 12.815 through 12.820 are deleted, as follows:

§ 12.107 Labor standards enforcement report.

(a) A semiannual report is required on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and Contract Work Hours Standards Act. The reporting periods are 1 January through 30 June and 1 July through 31 December. The reports shall be prepared by the contract administration office and will be submitted through channels so as to reach the labor relations advisor of the Headquarters concerned not later than 25 days after the close of the reporting period. Within the next 5 days a report will be submitted by the Headquarters to the Administrator, Wage and Hour Division, Workplace Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(b) The report shall contain the following information which shall be stated separately, as applicable, in two columns—one column for construction work subject to the Davis-Bacon Act and Contract Work Hours Standards Act and the other column for nonconstruction work subject to the Contract Work Hours Standards Act:

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received—

(i) Prime,

(ii) Subcontractors;

(5) Number of investigations—

(i) Undertaken,

(ii) Completed;

(6) Number of contractors/subcontractors found in violation—

(i) Prime,

(ii) Subcontractors;

(7) Amount of wage restitution found due—

(i) Davis-Bacon Act.

(ii) Contract Work Hours Standards Act;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act.

(ii) Contract Work Hours Standards Act;

(9) Amount of liquidated damages assessed under the Contract Work Hours Standards Act—

(i) Number of contracts involved;

(10) Number of complaints received from—

(i) Labor unions,

(ii) Individual employees,

(iii) Department of Labor, and

(iv) Others, including Congressional;

(11) Number of employees and the total amount paid or withheld under—

(i) Davis-Bacon Act,

(ii) Contract Work Hours Standards Act,

(iii) Copeland Act;

(12) Prework activities—

(i) Number of conferences held,

(ii) Letters sent;

(13) Number of compliance checks performed;

(14) Number of employees interviewed.

Subpart H—Equal Employment Opportunity

§ 12.801 Policy.

* * * * *

(c) No contract or modification thereto involving new procurement shall be entered into and no subcontract shall be approved with a company which has been declared ineligible under, or found to be in noncompliance with, the Equal Opportunity Program, in accordance with the procedures set forth in this subpart.

§ 12.802 Definitions.

* * * * *

(m) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (2) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(n) "Subcontractor" means any person holding a subcontract and any person who has held a subcontract subject to the order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(o) "Contract Compliance Office" or "CCO" means a DOD Contract Compliance Office (see § 12.803(f)).

(p) "Compliance Agency" means the Department or Agency designated by the Department of Labor to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the Equal Employment Opportunity Program as the Department of Labor may determine to be appropriate.

§ 12.804 Equal opportunity clauses.

* * * * *

(f) Contract Compliance Offices (CCO) have been organized at both headquarters and field levels within the Defense Supply Agency. CCOs are administered as separate components of the Defense Contract Administration Services (DCAS) and are responsible for the following when DOD is the compliance agency:

(1) Developing information on contractor and subcontractor compliance, including the conduct of a program of compliance reviews, the investigations of complaints, and the conduct of preaward reviews as provided for in (i) the Executive order, (ii) the regulations of the Secretary of Labor, (iii) this subpart and (iv) such other procedures for developing information on contractor and

subcontractor compliance as may be prescribed;

(2) In the case of preaward compliance reviews, furnishing contracting officers with determinations as to whether the prospective contractors and known first-tier subcontractors are eligible for award; and

(3) Attempting to secure compliance by contractors and subcontractors with the provisions of the Equal Opportunity clause through persuasion, negotiation and conciliation.

§ 12.804 Equal opportunity clauses.

(a) *Government contracts.* The following clause shall be included in all contracts (and modifications thereof if the clause was not included in the original contract), unless exempted in accordance with § 12.805.

EQUAL OPPORTUNITY (APRIL 1971)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of said rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* The following clause shall be included as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction, unless exempted in accordance with § 12.805.

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION) JANUARY (1969)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the Regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above Equal Opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon Contractors

and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the Equal Opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by operation of the order and this subpart.* By operation of the Executive order, the Equal Opportunity clause shall be considered to be a part of every contract and subcontract required by the order and this subpart to include such a clause whether or not it is physically incorporated in such contracts.

(e) *Adaptation of language.* Prime contractors and subcontractors may make necessary changes in the language of the Equal Opportunity clause to identify properly the parties and their undertakings.

(f) *Notices to be posted.* (1) Paragraphs (1) and (3) of the Equal Opportunity clauses in paragraphs (a) and (b) of this section require prime contractors and subcontractors to post notices which set forth the provisions of the clauses. Unless alternative notices are prescribed by the Director, OFCC, or by the Director, DSA, with the approval of the Director, OFCC, the contracting officer shall furnish to contractors appropriate numbers of copies of the notice entitled "Equal Employment Opportunity is the Law." The notices are available in either English or Spanish versions. Stock numbers for these notices, as listed in the GSA Stores Stock Catalog, are 7690-926-8988 (English) and 7690-926-9118 (Spanish). Contracting officers shall obtain these notices in accordance with departmental procedures. Prime contractors shall obtain from contracting officers copies for first and other tier subcontractors as necessary.

(2) The requirement of paragraph (3) of the Equal Opportunity clause shall be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment and representatives of each labor union or other organization representing his employees with which he has a collective bargaining agreement or other contract or understanding.

§ 12.805 Exemptions.

(a) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt from the requirements of the Equal Opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount thereof rather than the amount of the Federal financial assistance shall govern. Indefinite delivery type contracts and subcontracts thereunder, basic agreements and basic ordering agreements shall include the Equal Opportunity clause, except when the contracting officer (in the case of subcontractors, the prime contractor or subcontractors issuing the subcontract) determines that the amount to be ordered is not expected to exceed $10,000 in any single year. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years if any. Notwithstanding the above, the Equal Opportunity clause shall be incorporated into such contract, subcontract, basic agreement or basic ordering agreement whenever the amount of a single order or procurement action exceeds $10,000. Once the clause is incorporated, the contract, subcontract, basic agreement, or basic ordering agreement shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered, in any year. No agency, contractor or subcontractor shall procure supplies or services in less than usual quantities to avoid applicability of the Equal Opportunity clause.

(b) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States. See § 12.808-2(c) for procedures in cases where employees are recruited in the United States.

(c) *Contracts with State or local governments.* The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Contracts exempted by the Secretary of Defense in the interest of national security.* (1) Any requirement set forth in this subpart shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) *Request for exemption.* The contracting officer shall prepare a detailed justification for such determination which shall be submitted to the ASD (M&RA) in accordance with Departmental procedures. The ASD(M&RA) shall submit the request for exemption to the Secretary of Defense for approval, and shall notify the Director, OFCC, within 30 days of such a determination.

(e) *Specific contracts and facilities exempted by the Director, OFCC*—(1) *Specific contracts.* The Director, OFCC, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. He may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order.

(2) *Facilities not connected with contracts.* The Director, OFCC, may exempt from the requirements of the clause any of a prime contractor's or a subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the Order.

(3) *Special circumstances.* The Director, OFCC, may exempt a contract or subcontract when he finds that special circumstances indicate that use of either of the clauses set forth in § 12.804 in the contract or subcontract would not be in the national interest.

(4) *Request for exemptions.* The contracting officer shall submit a detailed justification for omitting or modifying the clause under subparagraph (1), (2) or (3) of this paragraph to the ASD (M&RA) in accordance with Departmental procedures.

(5) *Withdrawal of exemption by the Director, OFCC.* When any contract or subcontract is of a class exempted under this section the Director, OFCC, may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the Order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In procurements entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 12.806 Equal opportunity solicitation provisions.

(a) *Preaward compliance review.* Each solicitation, written or oral, for nonexempt contracts estimated to be for $1 million or more shall advise bidders or offerors that prior to the award of a contract the proposed contractor and his known first-tier subcontractors with proposed subcontracts of $1 million or more shall be subject to an EEO compliance review as follows:

PREAWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (AUGUST 1970)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of $1 million or more will not be made under

this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of $1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(b) *Representations.* Insert the following provisions as applicable:

(1) When not contained on the solicitation form, the following:

(i) Certification of Nonsegregated Facilities

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.) By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). (Aug. 1970)

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

(ii) Equal opportunity:

EQUAL OPPORTUNITY

He ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114; that he ☐ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

(2) When the contract is for other than construction and is not exempt from the Equal Opportunity clause, the following:

AFFIRMATIVE ACTION PROGRAM (AUGUST 1970)

(The following certification shall be completed by each offeror whose offer is $50,000 or more and who has 50 employees or more.) The offeror certifies that he ☐ has, ☐ has not, developed and maintained at each of his establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

(3) When the contract is not exempt from the Equal Employment Opportunity clause, the following:

CERTIFICATION OF EQUAL EMPLOYMENT COMPLIANCE (APRIL 1971)

By submission of this offer, the offeror certifies that, to the best of his knowledge and belief except as noted below, up to the date of this offer no written notice such as a show cause letter, a letter indicating probable cause, or any other formal written notification citing specific deficiencies, has been received by the offeror from any Federal Government agency or representative thereof that the offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order No. 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and specifically as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further certified and agreed that should there be any change in the status of circumstances certified to above between this date and the date of expiration of this offer or any extension thereof, the Government Contracting Officer cognizant of this procurement will be notified forthwith promptly.

§ 12.807 Affirmative action programs.

§ 12.807-1 General.

Except as provided in § 12.805, each prime contractor and each subcontractor with 50 or more employees and a contract or subcontract of $50,000 or more is required to develop a written affirmative action compliance program for each of his establishments within 120 days from the commencement of his first such Government contract or subcontract.

§ 12.807-2 Contracts other than construction contracts.

An acceptable affirmative action program for applicable contractors other than construction contractors shall include:

(a) An analysis of areas in which the contractor is deficient in the utilization of minorities (41 CFR 60-2.10);

(b) An analysis of all major job categories at the facility, using the nine factors listed in 41 CFR 60-2.11(a) (1) through (9), with explanations if minorities are currently being underutilized in any one or more job categories;

(c) Support data for the analysis provided by paragraphs (a) and (b) of this section (41 CFR 60-2.11(c)); and

(d) The eight program ingredients listed under 41 CFR 60-2.12 (a) through (h), and goals and timetables (41 CFR 60-2.11(b)), to correct the deficiencies and thus to increase materially the utilization of minorities at all levels and in all segments of the contractor's work force where deficiencies exist (41 CFR 60-2.10).

§ 12.807-3 Construction contracts.

An acceptable affirmative action program for construction contractors shall meet the requirements of 41 CFR 60-1.40, including approved local plans. Such plans may require prospective contractors on projects in certain geographic areas to state, in their bids or proposals, percentage goals for minority employment which they will endeavor to meet during contract performance. Local plans which have been issued will be listed in Defense Procurement Circulars. Such plans will be sent to the principally affected procurement offices. Any other procurement office contemplating a construction project in excess of $10,000 within geographic areas covered by a local plan shall request instructions prior to issuance of a solicitation. Such requests shall be forwarded through procurement channels to: Labor Advisor, OASA (I&L), for the Army; the cognizant field office of the Naval Facilities Engineering Command for the Navy; Headquarters, USAF (AFSSP), for the Air Force; and Executive Director, P&P (DSAH-PPR), for the Defense Supply Agency.

§ 12.808 Compliance reviews and preaward clearances.

§ 12.808-1 General.

The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed, and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment, without regard to race, color, religion, sex, or national origin. The review shall include an evaluation of the contractor's affirmative action program (AAP) as well as a sufficient examination of his practices and employment statistics to ensure that his program identifies any deficiencies which may exist and that the program's goal and timetables established for their correction are realistic in accordance with 41 CFR Ch. 60. Responsibility for the conduct of compliance reviews has been assigned by the Director, Office of Federal Contract Compliance, to various Government agencies. Except where the compliance responsibility has been assigned to a department or agency other than the Department of Defense, DSA shall have the primary responsibility for the conduct of compliance reviews in accordance with the guidelines of the Director,

OFCC. DSA shall also conduct compliance reviews in accordance with any special request or instructions of the Director, OFCC. Compliance reviews may also be conducted by the Director, OFCC. Compliance reviews shall be conducted by qualified specialists regularly involved in equal opportunity programs.

§ 12.808–2 Contracting officers' responsibility for requesting preaward clearance.

(a) *Contracts and subcontracts of $1 million or more.* Except as provided in paragraph (d)(2) of this section, the contracting officer shall request the appropriate compliance agency to determine whether a company is in compliance and the company therefore is eligible for award prior to:

(1) Award of a contract (including letter contract) in an estimated or actual amount of $1 million or more;

(2) Award of a contract of an estimated or actual amount less than $1 million containing an option which if exercised would bring the contract to over $1 million;

(3) Issuance of a contract modification for new procurement including the exercising of contract options and spare parts provisioning, in an estimated or actual amount of $1 million or more;

(4) Consent to a first-tier subcontract for an estimated or actual amount of $1 million or more;

(5) Execution of a basic ordering agreement (BOA) or the extension or continuance of one beyond a 1-year period, when the aggregate amount of all orders estimated to be placed thereunder within 1 year after the date of the agreement or extension or continuance thereof is $1 million or more; or

(6) Issuance of an individual order in the actual or estimated amount of $1 million or more, under an indefinite delivery type contract, a basic ordering agreement, or under a Master Ship Repair Contract.

(b) *Contracts between $10,000 and $1 million.* If, in determining the contractor's responsibility for award of a contract in an estimated or actual amount between $10,000 and $1 million, the contracting officer learns or has reason to believe because of information from Government sources or from the offeror (see § 12.806(b)) that the prospective contractor is currently in violation of the Equal Opportunity clause, or has not developed an acceptable affirmative action program at each of his establishments, award shall be made only after ascertaining that the company is no longer in noncompliance and is, therefore, eligible for award. The request for clearance and clearance may be made by telephone or other informal means subject to confirmation in writing. Award may also be made, notwithstanding the company's failure to have developed an acceptable affirmative action program, if the contracting officer determines that the proposed contract is for less than $50,000 or that the company has fewer than 50 employees and, in either case, has not previously been required to develop an affirmative action program.

(c) *Procedures for requesting preaward clearance.* (1) When the Department of Defense is the compliance agency, the contracting officer shall request preaward clearance for the prime contract and all known first-tier subcontracts of $1 million or more from the CCO of the DCASR where the prime contract is to be performed (see DOD Directory of Contract Administration Components (DOD 4105.59–H)). When it is necessary to make the request by telephone written confirmation shall follow.

(2) When the compliance agency for the prime contract is other than the Department of Defense, the contracting officer shall request preaward clearance for the prime contract directly from the cognizant compliance agency. Preaward clearance for each known proposed first-tier subcontract of $1 million or more shall be requested by the contracting officer directly from the compliance agency for that subcontractor. When the Department of Defense has compliance responsibility for the proposed subcontractor, the contracting officer shall request the preaward clearance from the CCO of the DCASR where the subcontract is to be performed (see DoD 4105.59–H).

(3) When contract work is to be performed outside the United States with employees recruited within the United States, the preaward review should be requested from the CCO of DCASR serving the area where the contractor's corporate home or branch office is located within the United States, or the corporate location where personnel recruiting is handled, if different from the foregoing. In cases where the proposed contractor has no corporate office or location within the United States, the preaward action should be based on the location of the recruiting agency, as defined in § 12.802(j), in the United States.

(4) When the compliance agency is unknown, the contracting officer shall contact, by telephone if convenient, the CCO of the DCASR where the prime contract is to be performed for information as to the appropriate compliance agency. Requests for clearance received by CCOs which should have been directed to another CCO or another compliance agency shall be forwarded by the receiving CCO directly to the appropriate compliance office or agency and the contracting officer advised of the referral.

(5) In making a request for preaward clearance, the contracting officer shall furnish the following information:

(i) Name and address of the prospective prime contractor, any corporate affiliate thereof at which work is to be performed, and each known first-tier subcontractor with a proposed subcontract estimated at $1 million or more;

(ii) Anticipated date of award;

(iii) Information as to whether the prime contractor and known first-tier subcontractors have previously held any Government contracts or subcontracts or federally assisted construction contracts;

(iv) Information as to whether the prime contractor has previously filed Employer Information Report SF–100;

(v) Place or places of performance of the prime and first-tier subcontracts estimated at $1 million or more, if known;

(vi) When directed to a CCO of a DCASR, the anticipated dollar category for the prime and each subcontract as follows:

Category A, if between $1 and $2 million;

Category B, if between $2 and $50 million;

Category C, if over $50 million; and

(vii) When the request is for clearance of a proposed award under $1 million, the source and nature of the information causing the contracting officer to seek preaward clearance.

(d) *Time for requesting preaward clearance.* (1) The contracting officer shall request a preaward clearance as soon as it is reasonably certain who the successful contractor will be, so as to provide as much time as possible prior to award for the CCO or the compliance agency to conduct necessary reviews. Except as provided in subparagraph (2) of this paragraph, preaward clearance shall be requested at least 10 working days and, when possible, 30 calendar days prior to the proposed award date. If the cognizant compliance agency is outside the Department of Defense, the request for preaward clearance shall provide 30 calendar days unless the cognizant compliance agency agrees to a shorter time. If the CCO is unable to conduct a compliance review of the prospective prime contractor and obtain necessary clearance for first-tier subcontractors within the time requested, the CCO shall advise the contracting officer within 5 working days of receipt of the request of the estimated time required. Additional time shall be granted to the CCO unless award is authorized in accordance with subparagraph (2) of this paragraph.

(2) When the procedures specified in subparagraph (1) of this paragraph would delay award of a contract beyond the time necessary for the Government to make awards or beyond the time specified in the bid or proposal or extension thereof, the contracting officer shall immediately inform the CCO or the cognizant compliance agency as to the expiration date of the bid or proposal or the required date of award and request clearance be provided prior to that date. If the CCO or cognizant compliance agency advises that a clearance review cannot be completed by the required date, the Head of the Procuring Activity may authorize the contracting officer to (i) make the award, (ii) immediately inform the CCO or cognizant compliance agency, and (iii) request a postaward review in accordance with § 12.808–3(c).

§ 12.808–3 CCO responsibility for preaward compliance actions.

(a) The CCO shall be responsible for making a determination as soon as possible regarding all EEO clearances requested in accordance with § 12.808–2. When one or more of the first-tier sub-

contractors comes under the compliance cognizance of another CCO or compliance agency, the CCO responsible for the prime contractor shall request clearance from that CCO or compliance agency and shall incorporate the results in his report to the contracting officer.

(b) The CCO shall notify the contracting officer within 5 working days of receipt of the request for clearance if review cannot be completed by the time requested. When the prospective contractor is found to be in noncompliance, the CCO shall, as soon as possible, notify the contracting officer that the company is not eligible for award.

(c) When awards are made without preaward clearance in accordance with § 12.808-2(d)(2), a review shall be performed by the CCO as soon as possible thereafter, but in no case later than 30 days after the date of award.

§ 12.809 Filing complaints.

(a) Complaints alleging discrimination in violation of the Equal Opportunity clause may be submitted in writing by any employee of any contractor or applicant for employment with such contractor, or by the employee's or applicant's authorized representative.

(b) Complaints should be filed with any DCASR-CCO, with the Director, DSA, Cameron Station, Alexandria, Va. 22314, or with the Director, OFCC, 12th and Constitution Avenue NW., Washington, DC 20210. When the complaint is directed against a contractor assigned to another compliance agency, the complainant or the complaint will be directed to the OFCC. The Director, OFCC, may refer complaints to DSA for processing, or where he considers it necessary or appropriate to the achievement of the purposes of the Executive order, he may assume jurisdiction over the matter.

(c) Complaints shall be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Director, OFCC, or the Assistant Secretary of Defense (Manpower and Reserve Affairs).

(d) Complaints shall be signed by the complainant or his authorized representative and shall contain:

(1) Name, address, and telephone number of the complainant;

(2) Name and address of the contractor or subcontractor committing the alleged discriminatory acts;

(3) A description of the acts considered to be discriminatory; and

(4) Such other pertinent information as will assist in the investigation and resolution of the complaint.

(e) Where a complaint contains incomplete information, the CCO, DCAS, or the DCASR-CCO shall request the needed information promptly from the complainant. In the event such information is not furnished to the CCO, DCAS, or the DCASR-CCO within 60 days of the date of such request, the case may be closed.

(f) Complaints filed with a purchasing office or contracting Department shall be transmitted immediately to the Director, DSA, who will furnish a copy of the complaint to the Director, OFCC, within 10 days of receipt.

§ 12.810 Processing complaints.

(a) *Investigation.* The Director, DSA, shall assign the complaint for investigation to the appropriate DCASR-CCO. The CCO concerned shall be responsible for conducting the necessary complaint investigation, developing a complete case record, establishing findings, and reaching a determination regarding the disposition of the case.

(b) *Reports.* The Contract Compliance Agency shall be responsible for advising the complainant and the contractor involved of the disposition of the case. Reports of all complaint investigations and copies of closeout letters to complainants shall be forwarded to the Director, OFCC, within 60 days from the date the case was received from the OFCC. The Contract Compliance Agency shall advise OFCC of any cases requiring more than 60 days for processing.

§ 12.811 Resolution of complaints and violations.

(a) If a complaint investigation made in accordance with the provisions of § 12.810 shows no violation of the Equal Opportunity clause, the Contract Compliance Agency shall so inform the Director, OFCC. The Director, OFCC, may review the findings and request further investigation by the Contract Compliance Agency or undertake such investigation as he deems appropriate.

(b) If any complaint investigation or compliance review indicates a violation of the clause, the matter shall be resolved by informal means whenever possible.

(c) Where any complaint, investigation or compliance review indicates a violation of the Equal Opportunity clause and the matter has not been resolved by informal means, the Director, OFCC, or the Contract Compliance Offices for DoD with the approval of the Director, OFCC, shall afford the contractor an opportunity for a hearing. If the final decision is that a violation of the clause has taken place, the Director, OFCC, or ASD (M&RA), with the approval of the Director, OFCC, may cause the cancellation, termination or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the Order.

§ 12.812 Reports and other required information.

(a) Title 41, § 60-1.7 of the CFR prescribes the annual filing of Standard Form 100 (EEO-1) by prime and subcontractors.

(b) If the bidder or prospective prime contractor or proposed subcontractor has not stated in his bid or offer that he has complied with this requirement, he should state, prior to award of the contract, whether he has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether he has filed with the Joint Reporting Committee, the Director, OFCC, an agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements.

(c) In any case in which the bidder, prospective prime contractor or proposed subcontractor who participated in a previous contract or subcontract subject to Executive Orders 10925, 11114, or 11246 has not filed a report due under the applicable filing requirements, no contract or subcontract shall be awarded unless such contractor submits a report covering the delinquent period or such other period specified by the Director, OFCC, or the Director, DSA, and notifies the PCO of such submission.

(d) A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information, including copies of affirmative action programs, as the Director, DSA, or the Director, OFCC, requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to the award or after the award, or both, to furnish such information, including copies of affirmative action programs, as the Director, DSA, or the Director, OFCC, requests.

(e) Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the Equal Opportunity clause and is basis for the imposition by the ASD (M&RA), by the Director, OFCC, or by an applicant, prime contractor or subcontractor of any sanctions authorized by these regulations. Any such failure shall be reported in writing to the Director, OFCC, by the Director, DSA, as soon as practicable after it occurs.

(f) Reports filed and information furnished pursuant to this subpart shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purpose of the order and said Act and, to the extent consistent with this purpose, shall be held in confidence as privileged information in accordance with § 286.6(b)(4) of this chapter, when requested by the offeror, contractor or subcontractor.

§ 12.813 Enforcement procedures.

§ 12.813-1 Informal enforcement procedures.

When a compliance investigation or compliance review indicates the existence of an apparent violation of the Equal Opportunity clause in § 12.804 or apparent noncompliance with the contractor's affirmative action program established in accordance with § 12.807, the matter should be resolved to the greatest extent possible by informal means, including conference, conciliation, mediation, and persuasion. Such informal means may include informal hearings when the Director, OFCC, or the Director, DSA, with the approval of the Director, OFCC, decides that such informal hearings would be helpful in determining the status of the contractor's or subcontractor's compliance with the terms of the Equal Opportunity clause or his affirmative action program. The informal hearings shall be conducted by

a hearing officer appointed by the Director, OFCC, or the Director, DSA. The contractor or subcontractor involved shall be advised in writing of the time and place of the hearing, and other relevant information. Parties to informal hearings may be represented by counsel and shall have a fair opportunity to present any relevant material. Formal rules of evidence shall not apply to such proceedings.

§ 12.813–2 Formal enforcement procedures.

(a) When the informal enforcement procedures described in § 12.813–1 have not resolved the matter, the DCASR Commander shall issue a notice to the contractor informing him that he will have 30 days to develop an acceptable affirmative action program, or to correct deficiencies in his program, or otherwise demonstrate why enforcement proceedings under section 209(b) should not be instituted. The contractor should be informed that such enforcement proceedings could result in cancellation or termination of his contract, and other proceedings which may ultimately result in his being declared ineligible for future Government contracts. During the 30-day period, every effort shall be made by the DOD CCO through conciliation, mediation and persuasion to resolve the deficiencies which led to the determination of noncompliance.

(b) If the contractor fails to show acceptable reasons for his failure to develop an AAP, or fails to develop or effectively implement an acceptable AAP, or otherwise fails to correct apparent violations of the Equal Opportunity clause within the 30-day period provided for in paragraph (a) of this section, the DOD CCO shall notify the DCASR Commander, the Director, DSA, and the contracting officer, as appropriate.

(c) Upon the approval of the Director, OFCC, and ASD(M&RA), the Director, DSA, shall notify the contractor that he has 10 calendar days in which to request a hearing on the question of whether existing Government contracts should be canceled or terminated and whether the contractor should be declared ineligible for future Government contracts. The contractor shall be informed that the hearings are to be held in accordance with section 208(b) of Executive Order 11246. The contractor shall also be informed that his failure to request a hearing within 10 calendar days will result in his current Government contracts being canceled or terminated for default and his being declared ineligible for future Government contracts.

(d) If a request for a hearing has not been received after 10 calendar days from the date of the notice given by the Director, DSA, pursuant to paragraph (c) of this section, the ASD(M&RA) shall request approval from the Director, OFCC, to declare the contractor ineligible for future contracts, and cancel or terminate for default existing contracts.

(e) If the contractor requests a hearing in response to the notice sent pursuant to paragraph (c) of this section, the Director, OFCC, or the Director, DSA, with the approval of the Director, OFCC, may convene such formal hearings. Reasonable notice of a hearing shall be sent by certified mail, return receipt requested, to the last known address of the prime contractor or subcontractor concerned. Such notice shall contain the time and place of hearing, a statement of the provisions of the order and regulations pursuant to which the hearing is to be held, and a concise statement of the matters pursuant to which the action furnishing the basis of the hearing has been taken or is proposed to be taken. A copy of such notice shall be sent to OFCC. Hearings shall be held before a hearing officer designated by the Director, OFCC, or the Director, DSA. Each party shall have the right to counsel and a fair opportunity to present evidence and argument and to cross-examine. Wherever a formal hearing is based in whole or in part on matters subject to the collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Any other person or organization shall be permitted to participate upon a showing that such person or organization has an interest in the proceedings and may contribute materially to the proper disposition thereof. The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

(f) When the hearing is conducted by DSA, the hearing officer will make his report to the Director, DSA, who will make his recommendation to the ASD (M&RA). The decision of the ASD (M&RA) shall be final upon the approval of the Director, OFCC. When the hearing is conducted by a hearing officer appointed by the Director, OFCC, the hearing officer will make recommendations to the Director, OFCC, who will make the final decision. Parties will be furnished with copies of the hearing officer's recommendations and will be given an opportunity to submit their views.

§ 12.814 Sanctions and penalties.

(a) With the prior approval of the Director, OFCC, the following sanctions and penalties may be exercised against contractors found to be in violation of the Executive order, the regulations of the Secretary of Labor, or the clauses in § 12.804:

(1) Publication of the names of such contractors or their unions;

(2) Cancellation, termination, or suspension of the contractor's contracts or portions thereof; and

(3) Debarment from future Government contracts, or extensions or modifications of existing contracts until such contractors have established and carried out personnel and employment policies in compliance with the Executive order, the regulation of the Secretary of Labor, and the compliance program of the Director, DSA.

(b) The Director, OFCC, may refer any matter arising under the Executive Order to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

(c) The above sanctions and penalties may be exercised by the Director, OFCC, or the ASD(M&RA) against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Executive order or any other Federal, State, or local laws requiring equal employment opportunity.

(d) Those declared ineligible under paragraph (a) or (c) of this section may request reinstatement in a letter directed to the Director, OFCC. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the Equal Opportunity clause.

§§ 12.815—12.820 [Deleted]

PART 13—GOVERNMENT PROPERTY

13. Sections 13.312 and 13.404(a) are revised; § 13.405(a) is amended and (d) is added; § 13.406 is added, as follows:

§ 13.312 Items to be reported to and screened by Defense Industrial Plant Equipment Center (DIPEC).

The items to be reported to and screened by the Defense Industrial Plant Equipment Center in accordance with §§ 13.301(g) and 13.306–4 are listed in the following Joint DoD Handbooks.

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

(NOTE—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

FSC	Title	Army	Navy	Air Force	DSA	Marine Corps
6625	Electrical and Electronic Properties Measuring and Testing Instruments.	SB 708-6625-1	NAVSUP Publication 5543	AFM 78-6	DSAH 4215.1	
3220	Woodworking Machines	SB 708-3220-1	NAVSANDA Publication 5500	AFM 78-7	DSAH 4215.2	MCO 4870.6
3415-3417, 3441-3449.	Production Equipment Directory D1 Metalworking Machinery 1960 Revision Volumes 1 and 2.					

FSC	Title	Army	Navy	Air Force	DSA	Marine Corps
3415-3417, 3441-3449.	Supplement to Production Equipment Directory D1 Metalworking Machinery 1960 Revision.	SB 703-3400-1	NAVSANDA Publication 5501	AFM 78-42	DSAH 4215.3	MCO P4870.7
3424, 4430	Industrial Furnaces and Ovens Volume 1 and 2.	SB 703-4430-1	NAVSANDA Publication 5502	AFM 78-8	DSAH 4215.4	MCO P4870.8
6635	Physical Properties Testing Equipment.	SB 703-6635-1	NAVSUP Publication 5504	AFM 78-10	DSAH 4215.6	MCO P4870.10A
3530, 3625	Textile Industries Machinery and Industrial Sewing Machines.	SB 703-3500-1	NAVSANDA Publication 5506	AFM 78-12	DSAH 4215.8	MCO P4870.12
6630	Environmental Chambers	SB 703-6636-1	NAVSUP Publication 5508	AFM 78-14	DSAH 4215.10	MCO P4870.14A
3422, 3426	Rolling Mills, Drawing Machines and Metal Finishing Equipment.	SB703-3400-2	NAVSANDA Publication 5510	AFM 78-15	DSAH 4215.12	MCO P4870.16
3450, 3460, 5220.	Portable Machine Tools and Toolroom Layout Plates and Tables.	SB703-3400-3	NAVSANDA Publication 5511	AFM 78-16	DSAH 4215.13	MCO P4870.17
6680, 6685	Liquid and Gas, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments.	SB703-6600-1	NAVSANDA Publication 5513	AFM 78-18	DSAH 4215.15	MCO P4870.19
3635	Crystal and Glass Industries Machinery.	SB703-3635-1	NAVSANDA Publication 5514	AFM 78-19	DSAH 4215.16	MCO P4870.20
4440	Driers, Dehydrators, and Anhydrators.	SB703-4440-1	NAVSUP Publication 5515	AFM 78-20	DSAH 4215.17	MCO P4870.21A
6650, 6670	Scales, Balances and Optical Instruments.	SB703-6600-2	NAVSUP Publication 5516	AFM 78-25	DSAH 4215.18	MCO P4870.22A
3680	Foundry Equipment	SB703-3680-1	NAVSANDA Publication 5517	AFM 78-23	DSAH 4215.19	MCO P4870.23
6695	Combination and Miscellaneous Instruments Including Dynamometers.	SB703-6695-1	NAVSUP Publication 5519	AFM 78-30	DSAH 4215.21	MCO P4870.25A
4920	Aircraft Maintenance and Repair Shop Specialized Equipment.	SB703-4920-1	NAVSUP Publication 5521	AFM 78-33	DSAH 4215.23	MCO P4870.27A
4330	Centrifugals, Separators and Filters.	SB703-4330-1	NAVSANDA Publication 5522	AFM 78-27	DSAH 4215.24	MCO P4870.23
6630, 6640	Chemical Analysis and Laboratory Instruments.	SB703-6600-3	NAVSUP Publication 5529	AFM 78-33	DSAH 4215.30	MCO P4870.35
3615, 3660	Pulp and Paper Industries and Size Reduction Machinery.	SB 703-3600-1	NAVSUP Publication 5532	AFM 78-44	DSAH 4215.33	MCO P4870.33
3620	Rubber and Plastics Working Machinery.	SB 703-3620-1	NAVSUP Publication 5534	AFM 78-23	DSAH 4215.35	MCO P4870.40
3611, 3685, 3693, 3694, 3695.	Marking, Metal Container, Assembly, Clean Work Stations, and Miscellaneous Industry Machinery.	SB 703-3600-2	NAVSUP Publication 5535	AFM 78-26	DSAH 4215.36	MCO P4870.41
3650	Chemical and Pharmaceutical Products Manufacturing Machinery.	SB 703-3650-1	NAVSUP Publication 5536	AFM 78-45	DSAH 4215.37	MCO P4870.32
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 703-4940-1	NAVSUP Publication 5537	AFM 78-48	DSAH 4215.38	MCO P4870.43
3690, 4925	Specialized Ammunition and Ordnance Machinery.	SB 703-4900-1	NAVSUP Publication 5538	AFM 78-49	DSAH 4215.39	MCO P4870.44
3405	Metalworking Saws and Filing Machines.	SB 703-3405-1	NAVSUP Publication 5539	AFM 78-34	DSAH 4215.40	MCO P4870.47
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419).	SB 703-3418-1	NAVSUP Publication 5540	AFM 78-37	DSAH 4215.41	MCO P4870.48
3431, 3432, 3433, 3436, 3438.	Welding, Heat Cutting and Metalizing Equipment.	SB 703-3400-4	NAVSUP Publication 5541	AFM 78-39	DSAH 4215.42	MCO P4870.49
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	SB 703-3400-5	NAVSUP Publication 5542	AFM 78-41	DSAH 4215.43	MCO P4870.50
3419	Miscellaneous Machine Tools.	SB 703-3400-6	NAVSUP Publication 5547	AFM 78-46	DSAH 4215.44	MCO P4870.51
3413	Drilling and Tapping Machines.	SB 703-3413-1	NAVSUP Publication 5548	AFM 78-50	DSAH 4215.45	MCO P4870.53
3411, 3412, 3414.	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines.	SB 703-3400-7	NAVSUP Publication 5549	AFM 78-51	DSAH 4215.46	MCO P4870.55
4910	Motor Vehicle Maintenance and Repair Shop Specialized Equipment.	SB 703-4910-1	NAVSUP Publication 5550	AFM 78-52	DSAH 4215.47	MCO P4870.54

§ 13.404 Rental rates and policies applicable to the use of Government production and research property.

(a) Except as provided below, the rent for all Government production and research property shall be computed in accordance with the Use and Charges clause set forth in § 7.702-12 of this chapter for facilities. Rent for machine tools (Federal Supply Classes 3405, 3408, 3410, 3411 through 3419) and secondary metalforming and cutting machines (Federal Supply Classes 3441 through 3449) shall be based on the time such property is available for use. Rent for other classes of Government production and research property is normally charged on the same basis; however, if the Secretary concerned, or his designee, determines it to be in the best interest of the Government, rent may be charged on an actual use or other basis. In such cases, the Use and Charges clause should be appropriately modified.

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§ 13.405 Non-Government use of industrial plant equipment (IPE).

(a) The prior written approval of the contracting officer is required for any non-Government use of active Government-owned industrial plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the Secretary of the Department concerned or his designee shall be obtained. In addition, non-Government use of machine tools and secondary metalforming and cutting machines (Federal Supply Classes 3405, 3408, 3410, 3411 through 3419 and 3441 through 3449) in excess of 25 percent shall require the advance approval of the Office of Emergency Preparedness which shall be obtained through the Assistant Secretary of Defense (Installations and Logistics). Requests requiring approval by the Assistant Secretary of Defense (Installations and Logistics) shall be submitted at least 6 weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each such item the nomenclature, production equipment code, year of manufacture, and the acquisition cost.

* * * * *

(d) For purposes of this section, use for a foreign government authorized under § 13.406 is Government use.

§ 13.406 Rent-free use of Government production and research property on work for foreign governments.

(a) It is the policy of the Department of Defense to encourage the maximum feasible sales of supplies manufactured or services performed in the United States to friendly foreign governments or organizations thereof. Rent-free use of Government production and research property to promote this policy should be authorized when the requirements of paragraph (b) of this section are satisfied. Requests made for such use shall be processed as expeditiously as possible.

(b) Upon the request of a foreign government, or a contractor certifying that he is acting on behalf of a foreign government, the Secretary or his designee cognizant of Government production and research property located in the United States, its possessions, or Puerto Rico, may give written approval for its use without charge on contracts of foreign governments or subcontracts thereunder if:

(1) The foreign government would be authorized to place the contract with the Department concerned under the Foreign Military Sales Act of 1968, as amended, or such use is authorized by an agreement with the foreign government;

(2) The foreign government's placement of the contract directly with the contractor is consistent with the best interest of the United States;

(3) It appears that the foreign government will place the contract with the contractor whether or not such use is authorized, or that no competitive pricing advantage will accrue to the contractor by virtue of such use;

(4) The contractor agrees that no charge for the use of such property will be included in the price charged the foreign government under the contract; and

(5) Such use will not interfere with foreseeable requirements of the United States.

PART 14—PROCUREMENT QUALITY ASSURANCE

14. Subpart F is revised and Subpart G is revoked, as follows:

Subpart F—Performance of Government Procurement Quality Assurance Actions for and by Other Government Agencies, Foreign Governments and International Organizations

Sec.
14.601 General.
14.602 Federal Aviation Administration.
14.603 Quality assurance among NATO countries.
14.603-1 NATO quality control system requirements for industry.
14.603-2 NATO Quality Assurance Handbook AQAP-2.

AUTHORITY: The provisions of this Subpart F issued under secs. 2202, 2301-2314, 70A Stat. 120, 127-133; 10 U.S.C. 2202, 2301-2314.

Subpart F—Performance of Government Procurement Quality Assurance Actions for and by Other Government Agencies, Foreign Governments and International Organizations

§ 14.601 General.

Except for the special quality assurance provisions below concerning the Federal Aviation Administration and NATO, performance of government procurement quality assurance and other contract administration services for and by other government agencies, foreign governments and international organizations is in accordance with Section XX, Parts 5 and 6 of the ASPR.

§ 14.602 Federal Aviation Administration.

Under Public Law 85-726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

§ 14.603 Quality assurance among NATO countries.

The NATO Standardization Agreements (STANAG) 4107—Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. They will also perform quality assurance in accordance with STANAG 4107, if requested. As a reservation to STANAG 4107, the U.S. Government requires reimbursement for work performed for other NATO countries.

§ 14.603-1 NATO quality control system requirements for industry.

The NATO Standardization Agreement (STANAG) 4108—NATO Quality Control System Requirements for Industry AQAP-1 sets forth details of an agreement among NATO Nations with an objective to standardize the application of Allied Quality Assurance Publication No. 1 (AQAP-1). In accordance with STANAG 4108 participants agree to:

(a) Encourage suppliers of defense materiel and services to establish Quality Control Systems in accordance with the principles outlined in AQAP-1;

(b) Consider compliance with AQAP-1 a basic factor when selecting suppliers of defense materiel in NATO cooperative projects;

(c) Use AQAP-1 as a guide for evaluating a supplier's Quality Control System when so requested by another NATO Country, which is considering placing a contract with that supplier.

This agreement has been ratified by the United States and other nations in NATO. The Military Departments may request NATO Nations to assure compliance with AQAP-1 in the performance of quality assurance in accordance with STANAG 4107. They will also assure compliance with AQAP-1 when so requested by a participating NATO Nation.

§ 14.603-2 NATO Quality Assurance Handbook AQAP-2.

NATO Quality Control System Requirements for Industry (AQAP-1) establishes requirements for a contractor's quality control system (§ 14.603-1). AQAP-2, Guide for Evaluation of a Contractor's Quality Control System for Compliance with AQAP-1, has been prepared to assist Quality Assurance Representatives of NATO Countries to administer the provisions of AQAP-1. AQAP-2 is not to be incorporated into contracts, but is to be used as guidance to Government Quality Assurance personnel when performing quality assurance for NATO Countries in accordance with STANAG 4107 to insure contractor's conformance to AQAP-1.

Subpart G [Revoked]

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Sections 15.107, 15.205-6(a)(1), and (f)(2) are revised; in § 15.205-16 the title is amended and paragraph (a)(2)(iv) is revised; §§ 15.205-33(d), 15.205-34(c), 15.205-44, 15.301-2, 15.301-3, and 15.302-7 are revised; § 15.303-1 is amended; § 15.303-6 is added; § 15.304-1 is revised; § 15.304-2 is amended; §§ 15.305-1, 15.305-2 (b), (c) and (d), and § 15.305-3 are revised; § 15.306-4(a) is amended; §§ 15.306-5(b), 15.307-2, and 15.307-3 are revised; § 15.307-5 is added; §§ 15.309-7, 15.309-7 (a) and (b), and 15.709-3 are revised; and §§ 15.709-4, 15.709-5 and 15.709-6 are added, as follows:

§ 15.107 Advance understandings on particular cost items.

(a) The extent of allowability of the selected items of cost covered in Subparts B through 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 desirable that contractors seek advance agreement with the Government as to the treatment to be accorded those special or unusual costs. Such agreements may also be initiated by the Government. Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the cost covered by the agreement. Any such agreement must be in writing, shall be executed by both contracting parties, and shall be incorporated in the present and future contracts to which it is applicable.

(b) The contracting officer is not authorized by this section to agree to a treatment of costs inconsistent with Subparts B through E of this part. For example, an advance agreement may not provide that, notwithstanding § 15.205-17, interest shall be allowable.

(c) An advance agreement entered into in accordance with this section shall contain a suitable statement of its intended applicability and duration. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

(d) Advance agreements may be negotiated to affect only a single contract, a group of contracts, or may be broad enough to affect all the contracts of a procuring activity, an agency, or the entire Department of Defense. An advance agreement which affects only one contract, or class of contract from a single buying office, shall be negotiated by the procuring contracting officer (PCO), his authorized representative, or an ACO when delegated this authority by the PCO. The proposed agreement shall be coordinated between the ACO and the PCO prior to execution.

(e) Advance agreements, other than those negotiated by the PCO in accordance with paragraph (d) of this section, shall be negotiated by the cognizant ACO or the assigned Corporate Administrative Contracting Officer (CACO) except when this responsibility is currently assigned in the master list published annually in a Defense Procurement Circular for Tri-Service Departmental negotiation. Agreements at corporate level with contractors other than those assigned for Tri-Service negotiations,

and for which a CACO has not been established, shall be negotiated by an ACO determined by majority vote among the Departments concerned in general accordance with the procedures set forth in 20-903(b) of the ASPR.

(f) Prior to undertaking negotiation of an advance agreement under paragraph (e) of this section, the cognizant negotiator shall (1) determine whether there are other DOD or non-DOD departments or agencies that have a significant unliquidated dollar balance in contracts with the same contractor, (2) inform any such department or agency of the cost item(s) or other matters to be negotiated, and (3) invite the department or agency to participate in prenegotiation discussions, or in the subsequent negotiations as appropriate. The results of the negotiation will be binding upon all military departments. At the completion of the negotiation, the sponsor will prepare and distribute copies of the fully executed agreement to the military departments' procuring activities and Defense Contract Audit Agency.

(g) Examples of cost on which advance agreements may be particularly important are:

(1) Compensation for personal services including but not limited to allowances for offsite pay, incentive pay, location allowances, hardship pay and cost of living differential;

(2) Use charge for fully depreciated assets;

(3) Deferred maintenance costs

(4) Precontract costs;

(5) Independent research and development costs;

(6) Royalties;

(7) Selling and distribution costs;

(8) Travel costs, as related to special or mass personnel movements;

(9) Idle facilities and idle capacity;

(10) Automatic data processing equipment;

(11) Bid and proposal costs; and

(12) Severance pay to employees on support service contracts.

§ 15.205-6 Compensation for personal services.

(a) *General.* (1) (CWAS) 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 (except as otherwise provided in paragraph (f) of this section). 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, contributions to pension, annuity, and management employee incentive compensation plans, allowances for offsite pay, incentive pay, location allowances, hardship pay and cost of living differential. Except as otherwise specifically provided in this section, such costs are allowable to the extent that the total compensation of individual 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.

* * * * *

(f) *Deferred compensation (CWAS-NA).* * * *

(2) Deferred compensation is allowable only to the extent that:

(i) It is, together with all other compensation paid to the employee, reasonable in amount; and

(ii) It is paid (*a*) pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or (*b*) pursuant to a plan established and consistently applied thereafter by the contractor; and either

(*1*) It is deductible for the same fiscal year for Federal income tax purposes under section 404 (excluding subsection (a)(5)) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service: *Provided,* That

(*i*) Normal costs of pension plans incurred subsequent to the effective date of this section, not funded in the year incurred, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing of the Federal income tax return for any taxable year shall be deemed to have been made during such taxable year);

(*ii*) Allowable costs of contributions for past service or supplementary pension or annuity credits (including contributions for the equivalent of interest that would have been earned on previously unfunded costs, sometimes called "freezing payments") shall not exceed, for any year, amounts required to systematically amortize the actuarial liability annually over not less than 10 or more than 40 years beginning with the year that the liability was first assumed, either by announcement, agreement, regular practice or other means which would reasonably inform employees that continuing service would result in retirement benefits based in part on the previously unfunded past service;

(*iii*) Pension costs of previous years which have not been funded as of the effective date of this section are allowable to the extent they are systematically funded over not less than 10 years, provided the contractor can demonstrate that pension costs were allocated to Government contracts on a funding rather than an accrual basis in the accounting periods previous to the effective date of this section and also provided that the systematic funding starts no later than the contractor's first full fiscal year after the effective date of this section;

(*iv*) The determination of allowable costs shall take into consideration unrealized, as well as realized appreciation in the market value of the fund assets, established on a rational and systematic basis. This recognition shall include unrealized appreciation on equity securities taking into account both the investment policy and prior growth experience of the fund. The appreciation to be recognized for equity securities generally shall be the amount by which 80 percent of the market value exceeds the total adjusted book value. The adjusted book value is defined as the acquisition cost adjusted for appreciation or depreciation previously recognized whether or not actually recorded in the asset account. Unrealized depreciation of equity securities may be recognized to the extent of unrealized appreciation previously recognized, but the total of value of all equity securities in a fund shall not be depreciated below the acquisition cost. Initial recognition of accumulated unrealized appreciation may be spread over a period of time not to exceed 10 years. Ordinarily, appreciation and depreciation need not be recognized for debt securities expected to be held to maturity and redeemed at face value;

(*v*) Abnormal forfeitures, due to significant reduction in the contractor's level of employment, 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 costs otherwise allowable; where abnormal forfeitures were not taken into account previously, appropriate credit shall be given to the Government pursuant to § 15.201-5;

(*vi*) Any amount paid or funded and deductible in any year under section 404 (excluding section 404(a)(5)) of the Internal Revenue Code of 1954 as amended prior to the time it becomes allowable under this subdivision shall be applied to future years, in order of time, as if actually paid and deductible in such years;

or

(2) It is deductible in the same fiscal year for Federal income tax purposes under section 404(a)(5) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service, except that the costs of unfunded pension and retirement benefits paid directly to, or on behalf of, former employees shall be allowable only to the extent the contractor demonstrates that such costs, together with any pension and retirement costs allowed pursuant to (*1*) of this subdivision, do not exceed the amount that would be allowable under (ii)(*b*) if the contractor were providing for equivalent benefits on an actuarial basis in the current period.

* * * * *

§ 15.205-16 Insurance and indemnification. (CWAS)

(a) * * *

(2) * * *

(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 except that provisions for known or reasonably estimated self-insured liabilities, such as, liabilities for workmen's compensation, which do not become payable for more than one year

after such provision is made, shall not exceed the present value of the liability, determined by using a rate of 6 percent, compounded annually; and

* * * * *

§ 15.205–33 Recruitment costs.

* * * * *

(d) (CWAS–NA) Relocation costs incurred incident to recruitment of new employees are subject to § 15.205–25. When such costs have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government. However, costs of travel to an overseas location shall be considered travel costs in accordance with § 15.205–46 and not relocation costs for the purpose of this subparagraph, if (1) dependents are not permitted at that location for any reason, and (2) such costs do not include costs of transporting household goods.

§ 15.205–34 Rental costs (including sale and leaseback of property) (CWAS)

* * * * *

(c) Rental costs under short-term leasing are allowable to the extent that:

(1) The rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement; and

(2) They do not give rise to a material equity in the property (such as an option to renew or purchase at a bargain rental or price) other than that normally given to industry at large, but represent charges only for the current use of the property including, but not limited to, any incidental service costs such as maintenance, insurance and applicable taxes.

* * * * *

§ 15.205–44 Training and educational costs.

(a) (CWAS) Costs of preparation and maintenance of a program of instruction at noncollege level, including but not limited to on-the-job, classroom and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise thereform), and

(1) Salaries of the director of training and staff when the training program is conducted by the contractor; or

(2) Tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) (CWAS) Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the contractor's own facilities, are allowable only when the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to—

(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;

(5) Salaries and related costs of instructors who are employees of the contractor; and

(6) 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.

(c) (CWAS) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with fulltime education, including that provided at the contractor's on facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to a total period not to exceed 1 school year for each employee so trained. In unusual cases where required by military technology, the period may be extended.

(d) (CWAS) Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare bona fide employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees', salaries, subsistence and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree oriented curriculum, which are allowable only to the extent set forth in paragraphs (b) and (c) of this section.

(e) (CWAS) 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.

(f) (CWAS–NA) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

§ 15.301–2 Policy guides.

The successful application of these principles requires development of mutual understanding between representatives of universities and of the Department of Defense as to their scope, implementation, and interpretation. It is recognized that—

(a) The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

(b) Each college and university, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

(c) Each institution, in the fulfillment of its obligations, should be expected to employ sound management practices.

(d) The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities.

(e) All agencies of the Department of Defense involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying the cost principles and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

§ 15.301–3 Application.

All agencies of the Department of Defense that sponsor research and development work at educational institutions should apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should be used also as a guide in the pricing of fixed price contracts or lump sum agreements.

§ 15.302–7 Stipulated salary support.

Stipulated salary support is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

§ 15.303–1 Composition of total costs.

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 as described in § 15.303–5.

§ 15.303–6 Costs incurred by State and local governments.

Costs insurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs, such as, pension plans, FICA and any other costs specifically disbursed in behalf of and in direct benefit to the intitutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

(a) Such costs meet the requirements of §§ 15.303–1 through 15.303–5.

(b) Such costs are properly supported by cost allocation plans in accordance with Subpart G of this part (see § 15.709).

(c) Such costs are not otherwise borne directly or indirectly by the Federal Government.

§ 15.304–1 General.

Direct costs are those that can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

§ 15.304–2 Application to research agreements.

Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements: *Provided,* Such items are consistently treated by the institution as direct rather than indirect costs and are charged 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.

§ 15.305–1 General.

Indirect costs are those that have been incurred for common or joint objectives and, therefore, cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions, such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses; and Departmental administration expenses.

§ 15.305–2 Criteria for distribution.

* * * * *

(b) *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in § 15.306 to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in § 15.305–1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contributions to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in paragraph (c) of this section. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in paragraph (d) of this section.

(c) *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case by case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in paragraphs (b) and (d) of this section.

(2) Where any types of expense ordinarily treated as general administration and general expenses or Departmental administration expenses are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in § 15.302–4) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research; and

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

(d) *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under paragraph (b) of this section. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base: *Provided,* (i) It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (ii) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (i) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (ii) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (iii) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (iv) be performed specifically at the institution at which the results are to be used, and (v) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or

logic and reason, where neither benefit nor cause and effect relationship is determinable.

§ 15.305–3 Administration of limitations on allowances for research costs.

Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this part, the amount not recoverable under that research agreement may not be charged to other research agreements.

§ 15.306–4 Library expenses.

(a) The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 15.303–5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum type books) with no research value should not be allocated to Government-sponsored research.

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§ 15.306–5 Departmental administration expenses.

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(b) The distribution of Departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in § 15.305–2(d).

§ 15.307–2 The distribution base.

Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to § 15.307–1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

§ 15.307–3 Negotiated lump sum for indirect costs.

A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

§ 15.307–5 Negotiated fixed rates and carryforward provisions.

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

§ 15.309–7 Compensation for personal services.

(a) *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the institution for services rendered during the period or performance under Government research agreements. Such remuneration include salaries, wages, staff benefits (see § 15.309–39) and pension plan costs (see § 15.309–23). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied: *And provided,* That the charges for work performed directly on government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

(b) *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of costs to (1) instruction, (2) organized research, (3) indirect activities as defined in § 15.305–1, or (4) other institutional activities as defined in § 15.302–4 will be provided as described in paragraphs (c), (d), (e), and (f) of this section.

(c) *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

(d) *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual

investigators, deans, departmental chairmen or supervisors having firsthand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(e) *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in § 15.310 will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

(f) *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

(g) *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

(h) *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where university-wide policies do not adequately define the permissible extent of consultantships or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis

(i) *Salary rates for academic year.* Charges for work performed on government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on government research during such period would be unallowable. This principle applies to all members of the faculty at an institution and, since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation additional to fulltime base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution: *Provided, however,* That in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable: *Provided,* Such consulting arrangement is specifically provided in the research agreement or approved in writing by the sponsoring agency.

(j) *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subparagraphs of 15.309–7.

(k) *Salary rates for part-time faculty.* Charges for work performed on government research by faculty members having only part-time appointments for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to government research. Thus his additional compensation, chargeable by the institution to government research agreements, would be one-half of $5,000 or $2,500.

§ 15.309–37 Specialized service facilities operated by institution.

(a) The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable: *Provided,* The charges therefor meet the conditions of paragraphs (b) or (c) of this section, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under § 15.303–5.

(b) The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater,

the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this section, it is not necesary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

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§ 15.709–3 Instructions for preparation of cost allocation plans.

The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

§ 15.709–4 Negotiations and approval of indirect cost proposals for States.

(a) The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

(b) At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in paragraph (a) of this section for the negotiation, approval, and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

(c) Questions concerning the cost allocation plans approved under paragraphs (a) and (b) of this section should be directed to the agency responsible for such approvals.

§ 15.709–5 Negotiation and approval of indirect cost proposals for local governments.

(a) Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(b) A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare.

(c) At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

§ 15.709–6 Resolution of problems.

To the extent that problems are encountered among the Federal agencies in connection with §§ 15.709–4 and 15.709–5, the Office of Management and Budget will lend assistance as required.

PART 16—PROCUREMENT FORMS

16. Section 16.101 is amended and the footnote thereto revoked; § 16.101–1 is revised; § 16.102 is amended and the footnote thereto is revised; § 16.103 (b)(6) is added; § 16.201 is revised; §§ 16.202 and 16.204 are deleted and the sections reserved; § 16.205 is amended and the footnote thereto revised; § 16.401–1(c) is revised; § 16.405–2 is amended; § 16.501–2 in the clause contained therein, paragraph 4(a) is amended; § 16.505 is revised; § 16.803–4 is revoked; and § 16.811 is revised, as follows:

§ 16.101 Forms for Advertised Supply or Services Contracts (Standard Forms 33, 33A, 32, 36, 30, and 26 and DD Form 1707).

§ 16.101–1 General.

The following contract forms shall be used in effecting procurements of supplies or services by formal advertising:

(a) Solicitation, Offer, and Award (Standard Form 33) (November 1969 edition), its reverse (Representations, Certifications and Acknowledgements) and Information to Offerors (DD Form 1707), which is printed on blue paper and may be reproduced locally, unless such action is precluded by Departmental direction;

(b) Solicitation Instructions and Conditions (Standard Form 33A) (March 1969 edition), substituting the clause in § 7.103–14 of this chapter for paragraph 9(b);

(c) General Provisions (Supply Contract), Standard Form 32, November 1969 edition (to be used only when procuring supplies). When using this form, the following clause shall be added.

ALTERATIONS IN CONTRACT (OCTOBER 1970)

Standard Form 32, General Provisions (Supply Contract) is hereby altered by substituting the following ASPR clauses in effect on the date of this solicitation:

a. Title and Risk of Loss (ASPR 7–103.6) for Clause 6.

b. Examination of Records (ASPR 7–104.15) for Clause 10.

c. Notice and Assistance Regarding Patent and Copyright Infringement (ASPR 7–103.23) for Clause 13.

d. Buy American Act (ASPR 7–104.3) for Clause 14.

e. Utilization of Labor Surplus Area Concerns (ASPR 7–104.20(a)) for Clause 22.

(d) Any other special terms for the solicitation or additional contract provisions which are prescribed by the ASPR or Departmental procedures (see § 1.108 of this chapter). (NOTE: The Federal, State and Local Taxes clause at § 11.401–1 of this chapter shall be used as a part of Standard Form 32, when that standard form is used in any advertised procurement or in any of the other circumstances set forth in § 11.401–1 of this chapter. In the case of a noncompetitive negotiated fixed price contract in excess of $10,000, when the contracting officer is satisfied (1) that the contract price does not include contingencies for State and local taxes, and (2) that unless this clause is used the contract price will include such contingencies, the Federal, State, and Local Taxes clause at § 11.402–1 of this chapter shall be made a part of the contract.);

(e) Continuation Sheet (Standard Form 36);

(f) Amendment of Solicitation/Modification of Contract (Standard Form 30) when needed (see § 16.103); and

(g) Award/Contract (Standard Form 26) when needed.

§ 16.102 Forms for Negotiated Supply or Services Contracts (Standard Forms 18, 26, 30, 32,[1] 33, 33A[1] and 36; DD Forms 1665, 1706 and 1707; DD ASPR Form 1270).

§ 16.103 Amendment of solicitation/modification of contract (Standard Form 30).

* * * * *

(b) *Conditions for use.* * * *

(6) Provisioned items orders.

§ 16.201 Contractor Performance Evaluation Report (Development) (DD Form 1683).

DD Form 1683 is prescribed for use in accordance with § 1.908–2 of this chapter. Pending revision of the 1 September 1968 edition of this form, delete "Director of Contractor Performance Evaluation" in lines 7 and 8 on the reverse thereof.

§ 16.202 [Reserved]

§ 16.204 [Reserved]

§ 16.205 General Provisions—Fixed-Price Supply Contracts (Standard Form 32).[1]

Any negotiated contract to which Subpart A, Part 7 of this chapter, is applicable will include Standard Form 32. The addition of other clauses set forth in Subpart A, Part 7 of this chapter, or of other clauses not inconsistent with ASPR, shall be accomplished by including such clauses as "Additional General Provisions" numbered consecutively. The deletion or modification of clauses contained in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an Alterations in Contract clause. These instructions must be read in conjunction with Subpart A, Part 7 of this chapter, to make

[1] For ASPR clause substitutions on Standard Form 32, Nov. 1969 edition, and Standard Form 33A, Mar. 1969 edition, see § 16–101.

certain that current clauses are in use at all times.

§ 16.401–1 General.

* * * * *

(c) Standard. Form 19–B—Representations and Certifications (Construction Contract). (Pending revision of the October 1969 edition, substitute $5 million for $7,500,000 in paragraph 1 when the procurement is for dredging.)

* * * * *

§ 16.405–2 Construction Contractor Performance Evaluation Report (DD Form 1596).

DD Form 1596 is prescribed for use in accordance with § 1.908–5 of this chapter to provide an orderly and uniform method of determining and recording how effectively construction contractors meet their contractual commitments.

§ 16.501–2 Schedule provisions.

SCHEDULE PROVISIONS

* * * * *

4. *Withdrawal of students.* (April 1971). (a) The Government may, at its option and at any time, withdraw any student by issuing official orders. The Government shall furnish _____ copies of such orders to the Contractor within a reasonable time after publication.

* * * * *

§ 16.505 Communication service authorization (DD Form 428).

(a) In accordance with § 22.1007 of this chapter, DD Form 428 shall be used as an order for communication services, including associated equipment and facilities. It may be used also as a delivery order under GSA Federal Supply Schedule contracts.

(b) When the volume of transactions necessitates preparation of orders by other than manual processes, a format suitable for an electronic data processing system may be used in lieu of DD Form 428: *Provided,* That all essential elements of DD Form 428 are incorporated in the electronic data processed CSA.

§ 16.803–4 [Revoked]

§ 16.811 Contract Security Classification Specification (DD Forms 254 and 254c).

Contracting officers shall inform contractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract by using Contract Security Classification Specification, DD Form 254, and, if applicable, DD Form 254c. Instructions for preparation of these forms are contained in section VII, DoD 5220.22–R. The contracting officer is the approving official for the Contract Security Classification Specification and shall insure that it is distributed in accordance with section VII, DoD 5220.22–R.

PART 17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

17. Section 17.206(e) is revised; §§ 17.207–1(f), 17.208–2(a)(6), 17.208–3(a)(6) and (c)(5), and 17.208–4(a) are amended, as follows:

§ 17.206 Contractual requirements.

* * * * *

(e) The contract clause entitled "Examination of Records by Comptroller General" in accordance with § 7.104–15 of this chapter.

* * * * *

§ 17.207–1 Filing requests.

* * * * *

(f) In the Defense Atomic Support Agency,

Director, DASA,
Attention: J–4CM.

§ 17.208–2 Disposition below Secretarial level.

(a) *Disposition.* * * *

(6) Identification of any of the foregoing information which is classified "Confidential" or higher.

* * * * *

§ 17.208–3 Submission of cases to the Contract Adjustment Board.

(a) *Statement to Board.* * * *

(6) Where the case involves a Military Assistance Program purchase within the scope of § 6.704–1(b) of this chapter a recommendation as to the impracticability of inclusion of the Examination of Records by Comptroller General clause set forth in § 7.104–15 of this chapter (see § 17.206(e) and § 6.704 of this chapter).

* * * * *

(c) *Forwarding to Boards.* * * *

(5) In the Defense Atomic Support Agency, each case shall be sent to the Headquarters, DASA, Attention: J–4CM, for further processing.

§ 17.208–4 Processing by Contract Adjustment Boards.

(a) *Disposition.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by § 17.208–2(a) (1) through (5). The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

* * * * *

PART 18—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

18. Section 18.107 is revised; §§ 18.117 and 18.118 are added; and § 18.701(b)(2) is amended and new subparagraphs (3) and (4) are added, as follows:

§ 18.107 Specifications.

The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to documents generally known to industry. The documents include Federal, military, or nationally recognized industry, and technical society specifications and standards. The standards which best represent no more and no less than the Government's minimum needs shall be selected for incorporation by reference into the construction specifications.

§ 18.117 Multiple completion dates.

Contracting officers should consider the use of multiple completion dates whenever the work is readily separable without substantial detriment to the contractor. This may prevent undue delays in completion of an entire project when excusable delays or changes affect only a separable portion thereof. (See 18–113 concerning liquidated damages.)

§ 18.118 Responsibility of Architect-Engineer.

(a) Whenever there is a modification to a construction project resulting from an error or deficiency in plans or specifications, the Contracting Officer shall consider the extent to which the Architect-Engineer may be reasonably responsible for such error or deficiency under the clause in § 7.607–29 of this chapter, and if so whether any increased cost to the Government resulting from such error or deficiency shall be assessed against the Architect-Engineer. The determination and subsequent action in this regard shall be documented in the contract file.

(b) Whenever the Government is entitled to redesign services under the conditions of the clause in § 7.608.3(a) of this chapter and the Architect-Engineer firm is not required to redesign pursuant to that clause, the reasons for not obtaining such redesign service shall be documented in the contract file.

§ 18.701 Applicability.

* * * * *

(b) * * *

(2) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of proximity. For example, if a small office building is being erected, the "site of the work" will normally include no more than the building itself and its grounds and other land or structures "down the block" or "across the street" which the contractor or subcontractor uses in the course of his performance on the particular contract. In the case of larger contracts, such as for an airport or a dam, the "site of the work" is necessarily more extensive and includes the whole area in which the contract construction activity will take place. Fabrication plants, "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work": *Provided,* They are dedicated exclusively

or nearly so to performance on the contract and are so located in proximity to the actual construction location that it would be reasonable to include them. Once the limits of "site of the work" have been determined, the Secretary's wage rate decision is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of the work"), including drivers who temporarily leave the "site" to transport materials and equipment used in the course of contract operations.

(3) Not included in the "site of the work" are permanent home offices or branch plant establishments of a contractor or subcontractor, his fabrication plant and tool yard establishments, whose locations and continuance are governed by his general business operations. This is so even though mechanics and laborers working at such an establishment may repair or maintain machinery used in contract performance, or make doors, windows, frames, or forms. Regardless of the activities performed at such establishments, the Secretary's wage rate determination does not apply because they do not constitute the "site of the work". However, if such mechanics or laborers are required to go to a place which is the "site of the work" to perform activities on the contract there, the Secretary's wage rate decision is applicable for the actual time so spent, not including travel.

(4) Contracts with bona fide material suppliers or with manufacturers to produce, supply or deliver items to the "site of the work" for use in the construction activities are not subject to Davis-Bacon and related acts, nor is transportation by common carrier over regular routes. However, if such a materialman, manufacturer or carrier undertakes to perform a contract, or some part of a contract as a subcontractor, his mechanics and laborers employed at the "site of the work" are subject to the Secretary's wage rate decision in the same manner as those employed by any other contractor or subcontractor.

PART 19—TRANSPORTATION

19. Section 19.403-2(c) is revised, as follows:

§ 19.403-2 Use of prepaid commercial bills of lading.

* * * * *

(c) Unless otherwise provided by the contract, when the contractor is authorized to ship on a prepaid commercial bill of lading in lieu of a Government bill of lading, he must agree to show the prepaid transportation charges, or apportioned charges as agreed (see paragraph (a)(4) of this section), as a separate item on the invoice for each individual shipment of supplies. The contractor also must agree to retain related freight bills or other transportation billings paid separately for a period of three years and to furnish such bills to the Government when requested for audit purposes. When reimbursement of transportation charges is provided in the contract, the contract shall contain the agreement for retention of such bills. When the contracting officer or his representative authorizes prepaid shipment in special instances, subject to reimbursement, the written authority shall contain the instructions as to retention of freight bills.

PART 22—SERVICE CONTRACTS

20. The table of contents of this part is amended by adding a new Subpart J; § 22.107(a)(2) is amended; § 22.108 is added; § 22.501-3 is revised; § 22.602-1 "Recapitulation Schedules I and II and Schedule III—Intracity and Intraarea Movers" are revised; and a new Subpart J is added, as follows:

§ 22.107 Contract term.

(a) * * *

(2) A multiyear service contract within the coverage of § 1.322-8 of this chapter.

* * * * *

§ 22.108 Prohibition against contracts with Detective Agencies.

There is a statutory prohibition against entering into a contract with a detective agency or its employees regardless of the character of the contract services to be performed (5 U.S.C. 3108).

§ 22.501-3 Solicitation planning.

Bids or offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

§ 22.602-1 Schedule of items.

* * * * *

RECAPITULATION

SCHEDULE I

Schedule Total—Area ---------- $ ----------
(Repeat for each area listed.)

SCHEDULE II

Inbound Services

Item 15. *Complete Service—Inbound (HHG's)*. Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

Area ----------

Est Annual Qty	*Unit*	*Unit Price*	*Total*
	GCWT		

(Repeat for additional areas as needed.)

Item 16. *Complete Service—Inbound (HHG's)*. Service shall be same as Item 15 except that drayage of shipment to residence is not required.

Area ----------

Est Annual Qty	*Unit*	*Unit Price*	*Total*
	GCWT		

(Repeat for additional areas as needed.)

Item 17. *Complete Service Inbound (HHG's)*. Service shall be the same as *Item 15* except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

Area ----------

Est Annual Qty	*Unit*	*Unit Price*	*Total*
	GCWT		

(Repeat for additional areas as needed.)

Item 18. *Inbound Service—Contractor Facility (HHG's)*. Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial non-temporary storage Contractor at the Contractor's facility.

Area ----------

Est Annual Qty	*Unit*	*Unit Price*	*Total*
	GCWT		

(Repeat for additional areas as needed.)

Item 19. *Complete Service—Extraordinary Value Items*. Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

Area ----------

RECAPITULATION—Continued

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage Required	_____	GCWT	_____	_____
b. Drayage Not Required	_____	GCWT	_____	_____

(Repeat for additional areas as needed.)

Item 20. *Complete Service—Inbound (Unaccompanied Baggage)*. Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	GCWT	_____	_____

(Repeat for additional areas as needed.)

Item 21. *Complete Service—Inbound (Unaccompanied Baggage)*. Service shall be same as Item 20 except that drayage to residence is not required.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	GCWT	_____	_____

(Repeat for additional areas as needed.)

Item 22. *Inbound Service—Contractor Facility (Unaccompanied Baggage)*. Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	GCWT	_____	_____

(Repeat for additional areas as needed.)

Item 23. *Storage*. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier than the sixth (6th) work day following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30 day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	GCWT	_____	_____

(Repeat for additional areas as needed.)

Item 24. *Remarking/Recooperage Service.*

a. *Remarking of Shipments for Reconsignment or Diversions*. Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

Area _____

RECAPITULATION—Continued

Est Annual Qty	Unit	Unit Price	Total
_____	ea piece	_____	_____

(Repeat for additional areas as needed.)

b. *Recooperage*. Service shall consist of repair of containers not to exceed 30 percent of total area of shipping container as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	ea piece	_____	_____

(Repeat for additional areas as needed.)

Items 25–28 Reserved (See 22-602(b).)

RECAPITULATION

SCHEDULE II

Schedule Total—Area _____ $ _____

(Repeat for each area listed.)

SCHEDULE III

Intracity and Intraarea Movers

Item 29. *Complete Service for Intracity and Intraarea Moves*. Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, dryage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and materials from residence. Service shall be in conformance with provisions of MIL-P-22084 (S&A), except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	NCWT	_____	_____

(Repeat for additional areas as needed.)

Item 30. *Storage*. Storage of articles shall be furnished incident to services performed under Item 29 when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area _____

Est Annual Qty	Unit	Unit Price	Total
_____	NCWT	_____	_____

(Repeat for additional areas as needed.)

(Insert when required.)

Subpart J—Communication Services

Sec.	
22.1001	Applicability of subpart.
22.1002	Definitions.
22.1003	Policy.
22.1004	Regulatory bodies.
22.1005	Sources for communications services.
22.1005-1	Common carriers.
22.1005-2	Noncommon carriers.
22.1005-3	Foreign carriers.
22.1006	Who may procure communication services.
22.1007	Cost or pricing data.
22.1008	Type of contract.
22.1008-1	General.
22.1008-2	General agreements.
22.1008-3	Communication Service Authorization (CSA).
22.1008-4	Federal Supply Schedule contracts.
22.1009	Funding of Communication Service Authorizations (CSA's) under "general contracts".
22.1010	"Special construction".
22.1010-1	General.
22.1010-2	Applicability of construction labor standards to CSA's for special construction.
22.1011	Special assembly.
22.1012	Cancellation and termination.

AUTHORITY: The provisions of this Subpart J issued under secs. 2202, 2301-2314, 70A Stat. 120, 127-133; 10 U.S.C. 2202, 2301-2314.

Subpart J—Communication Services

§ 22.1001 Applicability of subpart.

This subpart applies to procurement of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate Governmental regulatory body. In addition, except as otherwise specifically provided, this subpart provides guidelines for the procurement of all other communications services (e.g., from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such procurements. This subpart does not apply to the Alaska Communications System (929 Communications Group (ACS)), Air Force Communications Services.

§ 22.1002 Definitions.

(a) *Communications services.* Communication services are those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite, and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services as well as all fixed or mobile facilities that are interconnected to systems providing these types of services.

(b) *Common carrier.* Any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental regulatory body is a common carrier.

(c) *Noncommon carrier.* Any entity other than a common carrier which offers communications facilities, services or equipment for lease is a noncommon carrier.

(d) *Foreign carrier.* Any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States is a foreign carrier.

(e) *Appropriate governmental regulatory body.* The term "appropriate governmental regulatory body" encompasses the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating pursuant to State authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this subpart.

§ 22.1003 Policy.

In accordance with instructions contained in Department of Defense directives and implementing departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

§ 22.1004 Regulatory bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Nothwithstanding other provisions of this subpart, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (1) on which the appropriate governmental regulatory body has not expressed itself, (2) over which the appropriate governmental regulatory body has declined jurisdiction, or (3) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume of normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its side of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with § 7.1702-11 of this chapter, the contracting officer shall immediately provide copies to the cognizant counsel.

§ 22.1005 Sources for communications services.

§ 22.1005-1 Common carriers.

(a) Generally, communication services shall be procured from the communication common carrier authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the procurement shall be made from the source offering the lowest cost to the

Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (e.g., unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be procured on a competitive basis to the maximum extent practicable; and every effort should be made to exclude from the service contract any provisions which would require the Government to lease from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

§ 22.1005–2 Noncommon carriers.

While communication services generally shall be procured from common carriers, they may be procured from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

§ 22.1005–3 Foreign carriers.

The procurement of communication services within or between foreign countries and the procurement from a foreign carrier of communication services from a foreign country to the United States present problems beyond the scope of this subpart. Frequently, foreign carriers are owned by the Government of the country in which they operate; and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigeous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistance of State Department representatives as appropriate.

§ 22.1006 Who may procure communication services.

(a) The general authority of the Head of a Procuring Activity contained in § 1.401 of this chapter includes the procurement of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year but not longer than 10 years under the following circumstances:

(1) The Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(2) Nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(3) The carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The Secretary of Defense has delegated the authority delegated to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(1) For the Department of the Army: The Commanding General, U.S. Army Strategic Communications Command; and the Commanding General, U.S. Continental Army Command;

(2) For the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(3) For the Department of the Air Force: The Commander, Air Force Logistics Command; and The Commander, Air Force Communications Service; and

(4) For the Defense Communications Agency: The Chief, Defense Commercial Communications Office.

(c) The 10-year limitation of paragraph (a) of this section does not apply to "general contracts" (see § 22.1008) but to obligating the Government for a longer period than 10 years by orders placed under the general contract.

§ 22.1007 Cost or pricing data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Public Law 87–653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in paragraph (b) of this section, common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Public Law 87–653 and § 3.807–3 of this chapter shall be applied accordingly.

(b) Even when not required by Public Law 87–653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see § 3.807–2(b) of this chapter). However, certified cost or pricing data shall not be required to support annual recurring costs below $5,000 and nonrecurring costs or basic termination liabilities below $10,000. Situations in which cost or pricing data may be found necessary within the above policy are:

(1) A tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(2) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(3) More than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;

(4) To support the reasonableness of special assembly rates and charges;

(5) To support the reasonableness of special construction and equipment charges;

(6) To support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(7) To support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by all Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

(1) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question: *Provided*, This form and detail is sufficient for the Government to make an adequate evaluation.

(2) For data submitted by other than common carrier, the data should be that required by § 3.807 of this chapter.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the procuring activity shall require that the cost or pricing data be accompanied with a certificate as required in § 3.807–4 of this chapter. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the procuring activity shall require that data submitted pursuant to paragraph (b) of this section be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and current and a statement that either:

(1) The rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or

(2) The rates for services in question are not based on these data but are based upon filed tariffs.

The procuring activity shall inform carriers required to furnish cost or pricing data under this paragraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this section, applications for waiver shall be processed in accordance with § 3.807-3 of this chapter.

§ 22.1008 Type of contract.

§ 22.1008-1 General.

Generally, the procurement of communication services is facilitated by a contractual arrangement which (a) permits the activities served to order services directly from time to time as specific requirements are developed; and/or (b) provides a written instrument of understanding between the Department of Defense or a procurement activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

§ 22.1008-2 General agreements.

General agreements, referred to as "general contracts" within the communications industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of the agreement. The general agreement together with the order issued thereunder (see § 22.1008-3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the U.S. Government.

§ 22.1008-3 Communication Service Authorization (CSA).

DD Form 428, Communication Service Authorization (CSA), or the electronic data processing substitute (see § 16.505 of this chapter) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this section, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the stated services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this subpart as would be applicable if the CSA were a contract entered into apart from the general contract.

§ 22.1008-4 Federal Supply Schedule contracts.

General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with § 5.104 of this chapter when it is not more advantageous to negotiate a separate contract.

§ 22.1009 Funding of Communication Service Authorizations (CSA's) under "general contracts."

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and Departmental implementations thereof. The guidelines in paragraphs (b) through (e) of this section are provided for the contracting officer's information.

(b) In procurements of communication services, unlike other types of procurements, obligations are usually recorded when the service starts or if and when a cancellation or termination is ordered. Thus funds are not obligated by the "general contract," but are ordinarily obligated by CSA's issued under the "general contracts" (see § 7.1702-8 of this chapter).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such one-time charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. Section 1.318 of this chapter does not apply to the issuance of CSA's.

§ 22.1010 "Special construction."

§ 22.1010-1 General.

(a) Special construction, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (1) moving or relocating specified equipment, (2) providing temporary facilities, (3) expediting provision of facilities, or (4) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this subpart and shall not ordinarily be subject to the provisions of Part 18 of this chapter.

(b) Special construction costs may take the following forms:

(1) Contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A one-time special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (1) determine the adequacy of the proposed construction; (2) disclose excessive or duplicative construction; and (3) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges (MSC) and reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

§ 22.1010-2 Applicability of construction labor standards to CSA's for special construction.

(a) The construction labor standards in Subpart G, Part 18 of this chapter, ordinarily do not apply to "special construction." However, if the special construction includes construction (as de-

fined in § 18.101-1 of this chapter) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under § 12.106 of this chapter.

(b) Individual CSA's which are subject to construction labor standards under § 12.106 of this chapter shall specifically recite that fact.

§ 22.1011 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

§ 22.1012 Cancellation and termination.

(a) (1) Cancellation is the discontinuation of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) Termination is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement in sufficient detail to establish the reasonableness of the proposed settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of § 8.213-1 of this chapter.

PART 24—DISPOSITION OF PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

21. Sections 24.204-4(e)(1) and 24.206-4(c) are amended as follows:

§ 24.204-4 Contractor's approved scrap procedure.

* * * * *

(e) (1) Silver scrap and scrap items containing recoverable quantities of silver shall be reported by letter to the Supply Officer, Naval Ammunition Depot, Earle, Colts Neck, N.J. 07722, for disposition instructions. Gold and platinum scrap and scrap items containing recoverable quantities of gold and platinum shall be shipped as follows:

* * * * *

§ 24.206-4 Proceeds of sale.

* * * * *

(c) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within 2 working days after receipt. Transmittals shall identify the procurement contract by number and name of the contractor.

PART 25—PRODUCTION MANAGEMENT

22. Section 25.202 is revised as follows:

§ 25.202 Production progress reporting by contractors.

(a) Production progress reporting by contractors, on a recurring or an exception basis, may be required in accordance with this part if approved by the Head of a Procuring Activity or his designee. Exception reports may be required only for (1) provisioned items, (2) data or (3) contracts retained by the purchasing office for administration in accordance with 20-703 of the ASPR.

(b) When production progress reports are required from the contractor, the clause set forth in § 7.104-51 of this chapter shall be included in the contract.

(c) Reports shall be made on DD Form 375, Production Progress Reports, or any other form approved by the Bureau of the Budget under the Federal Reports Act of 1942 (Public Law 77-831). Automatic data processing cards or tape or electrical transmissions which contain the data normally contained in these reports may be authorized in lieu of the printed form. Schedule provisions supporting the clause in paragraph (b) of this section shall contain but not be limited to instructions relative to (1) the frequency and timing (normally 5 workdays after each reporting period) of reporting; (2) the contract line items, exhibits, or exhibit line items for which reporting is required; (3) offices and mailing addresses to which reports shall be sent, including the purchasing office, the contract administration office (three copies), status control activities and inventory managers, if appropriate; and (4) special requirements as to codes and formats.

(d) If the contract is assigned for contract administration, the contract administration office shall take appropriate action to enforce contract production reporting requirements. The accuracy of contractor-prepared reports shall be verified by either (1) a program of continuous surveillance over the contractor's system for preparation of the reports, or (2) by individual review of each report.

(e) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required. If, on the other hand, either (1) the contractor forecasts a delivery or performance failure, or (2) the contract administration office does not concur in the contractor's no-failure report, and in either case (i) the delay is expected to be for more than 30 days, or (ii) purchasing office action, in any case, is deemed necessary, the contract administration office shall complete DD Form 375c, Production Progress Report (Continuation), and shall forward a copy to the purchasing office and to the status control activity and inventory managers within 4 working days after receipt of the DD Form 375.

(f) The DD Form 375c shall include:

(1) Problem—a statement of the difficulty, the reasons therefor, and whether caused by the Government or the contractor;

(2) Items and Quantities Affected;

(3) Date of commencement of the actual or anticipated delinquency;

(4) Action Taken—by the contractor and by the Government to overcome the anticipated or actual delinquency;

(5) Estimated Recovery Date—based upon verification and evaluation of the factors contributing to the delinquency; and

(6) Action Required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

PART 26—CONTRACT MODIFICATIONS

23. Sections 26.101, 26.301(c) and 26.400 are revised; § 26.402(b)(2) is amended, and in paragraph (c) of this section in the Agreement set forth therein paragraph 1 of the Witnesseth portion is amended; § 26.403(a)(3) is amended, and in paragraph (b) of this section in the Agreement set forth therein paragraph 1 of the Witnesseth portion is amended; and in § 26.404(a), (b), (d) and (e) are amended, as follows:

§ 26.101 Policy.

(a) Contract modifications, which are defined in § 1.201-2 of this chapter, shall be effected only by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract (see § 16.103 of this chapter). Contract modifications are of four general types:

(1) Administrative changes (These changes, such as a change in paying office and appropriation data, do not affect the substantive rights of the contracting parties and do not require the contractor's acceptance.),

(2) Change orders (see Subpart B of this part),

(3) Supplemental agreements (see Subpart C of this part), and

(4) Orders for provisioned items (see § 4.300 of this chapter).

(b) The price of contract modifications shall be negotiated prior to their execution if this can be done without adversely affecting the interests of the Gov-

ernment. This includes changes which could be issued unilaterally pursuant to the contract. If a significant cost increase could result from a modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless to do so would be clearly impracticable.

(c) Only contracting officers, as defined in § 1.201-3 of this chapter, acting within the scope of their authority are empowered to execute modifications on behalf of the Government. Other Government personnel shall not:

(1) Execute modifications,

(2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government, or

(3) Direct or encourage the contractor to perform work which should be the subject of a modification.

§ 26.301 Use.

* * * * *

(e) To definitize provisioned items orders (see § 4.300 of this chapter).

§ 26.400 Scope of subpart.

This subpart prescribes the policy and procedures for (a) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contracts, (b) a change of name of a contractor, (c) execution of novation agreements and change of name agreements by the cognizant Administrative Contracting Officer (ACO) (see definition below), and (d) entering into novation agreements and change of name agreements on behalf of the National Aeronautics and Space Administration (NASA).

§ 26.402 Agreement to recognize a successor in interest.

* * * * *

(b) * * *

(2) A list of all contracts and purchase orders which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

* * * * *

(c) * * *

AGREEMENT

* * * * *

WITNESSETH:

1. Whereas, the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration, has entered into certain contracts and purchase orders with the Transferor (namely: ----------) or as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference; and the term "the contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, heretofore made between the Government, represented by various Contracting Officers of the above named Department, or NASA and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties or obligations thereunder), and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee:

* * * * *

§ 26.403 Agreement to recognize change of name of contractor.

(a) * * *

(3) A list of all contracts and purchase orders which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, and the balance remaining unpaid.

(b) * * *

AGREEMENT

* * * * *

WITNESSETH:

1. Whereas, the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration, has entered into certain contracts and purchase orders with the XYZ Corporation, (namely: ----------) or (as set forth in the attached list marked "Exhibit A" to this agreement and herein incorporated by reference); and the term "the Contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, entered into between the Government, represented by various Contracting Officers of the Department of Defense, or NASA and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

* * * * *

§ 26.404 Processing novation agreements and change of name agreements.

(a) The cognizant ACO processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by § 26.402(b)(2), to the Departments and Defense agencies and NASA having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed herein.

Department of the Army, Hq., U.S. Army Materiel Command, Attention: AMCGC-P, Washington, D.C. 20315.

Department of the Navy, Chief of Naval Material, Attention: MAT 02D, Washington, D.C. 20360.

Department of the Air Force, Hq., U.S. Air Force Systems Command, Attention: PPPB, Washington, D.C. 20331.

Defense Supply Agency, Attention: DSAH-PPR, Cameron Station, Alexandria, Va. 22314.

National Aeronautics and Space Administration, Director of Procurement, Attention: KDP-3, Washington, D.C. 20546.

Defense Communications Agency, Attention: Code 260, Washington, D.C. 20305.

Director, Defense Atomic Support Agency, Attention: J-4CM, Washington, D.C. 20305.

Within 30 days after receipt of such notice, the Department or NASA may submit comments to the cognizant ACO, which comments shall be considered prior to execution of the proposed agreement. The absence of comment from a Department within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that Department.

(b) Where substantial alterations or additions to the formats set forth in §§ 26.402(c) and 26.403(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

* * * * *

(d) After execution and distribution of an agreement, an administrative change (Standard Form 30) shall be prepared by the cognizant ACO incorporating a summary of the agreement and attaching thereto a complete list of the contracts affected. For NASA contracts affected, only blocks 7, 8, 11 and 12 of the Standard Form 30 will be completed. Three copies of the Standard Form 30 for each contract shall be furnished to the purchasing offices concerned. Two additional copies will be furnished to the appropriate addressee(s) listed in paragraph (a) of this section.

(e) Novation and change of name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the appropriate Military Traffic Management and Terminal Service area activity set forth below for execution without regard to the provisions of paragraphs (a), (b) and (d) of this section.

Commander, Eastern Area, Military Traffic Management and Terminal Service, Attention: PPS, Brooklyn, N.Y. 11250.

Commander, Western Area, Military Traffic Management and Terminal Service, Oakland Army Base, Attention: PPS, Oakland, Calif. 94626.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

24. In § 30.7, part 3, item 303.1(b)(2) is amended; in § 30.8, part 1, item I-104 (a)(1) is amended, in part 3, items I-301(a)(i) is amended, Block 1 is revised, Block 2(b), Block 3, Block 4(b), Blocks 14 and 15, Block 16(a) (2), (3), (4) and (b) and (c)(16) are revised, Blocks 17(a) and 18 are amended, Block 19(d) is added, Block 21(b) is amended

and a new (c) added, under "A. Origin" (4) is revised and (5) is revoked, under "B. Destination" (5) is revised, in item I-302 the description of code "Z" is amended, item I-304 (i) and (iv) are revised and (vi) is revoked, in part 4, item I-404, Table 2 after Navy is revised. In part 5, item I-501, Block 1 is amended, in part 7, item I-701, Tables 3 and 5 are revised, as follows:

§ 30.7 Appendix K—Preaward survey procedures.

* * * * *

PART 3—SURVEY

* * * * *

K-303.1 *Interview, investigation and review.* * * *

(b) *Interview with management.* * * *

(2) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with prospective contractors to assure that they understand its requirements, including its technical aspects such as drawings, specifications, prototype, technical data and provisioning technical documentation (including automated data processing requirements when appropriate), testing, and packaging. Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the purchasing office.

* * * * *

§ 30.8 Appendix I—Material Inspection and Receiving Report (DD Forms 250, 250c, and 250-1).

PART 1—INTRODUCTION

* * * * *

I-104 *Application.*

(a) *DD Form 250:*

(1) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line, or exhibit subline items.

* * * * *

PART 3—PREPARATION OF THE DD FORM 250 AND DD FORM 250c

I-301 *Preparation Instructions.* DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) *General:*

(1) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 71AUG07, 71SEP24;

* * * * *

Block 1—*Procurement Instrument Identification (Contract).*

(a) Enter the 13 position alpha-numeric basic Procurement Instrument Identification (PII) number of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PII number, i.e., delivery orders under indefinite delivery type contracts, orders under basic ordering agreements and calls under blanket purchase agreements. This number shall be entered as shown in the examples below. Except as indicated in (b) below, do not enter supplementary numbers used in conjunction with basic PII numbers to identify (i) modifications of contracts and agreements or (ii) modifications to calls/orders or (iii) document numbers representing contracts written between contractors.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO. DABE01-66-C-0001

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO. DABE01-67-A-0001-0001

(b) When shipping instructions are furnished by telephone/TWX message and shipment is made prior to receipt of the confirming contract modification (SF 30), the contract modification six digit number or the two digit call/order number which is provided in accordance with 19-204 will be entered immediately following the PIIN or call/order four digit SPIIN.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO. DABE01-66-C-0001-PV0001

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO. DABE01-67-A-0001-0001AA

(c) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO. DSA400-68-F-1684 GS-000S-61917

(d) When a contract number other than PII number is used, enter that contract number.

Block 2—*Shipment Number.*

* * * * *

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16 (c) (6)).

* * * * *

Block 3—*Date Shipped.* Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

Block 4—*B/L TCN.* When applicable, enter:

(a) The commercial or Government bill of lading number after "B/L";

(b) The Transportation Control Number after "TCN" (When a TCN is assigned for each line item on the DD Form 250 in accordance with Block 16 instructions, insert "See Block 16."); and

(c) The initial (line haul) mode of shipment code in the lower right corner of the block (I-302).

* * * * *

Block 14—*Marked for/code.* Enter the "Mark For" code and address contained in the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

Block 15—*Item Number.* Enter the contract line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned immediately to the left of the vertical dashed line and prefixed with zeroes, if applicable to achieve four digits. Where a six digit identification containing alpha digits in the final two positions is used, enter the last two digits to the right of the vertical dashed line. Do not make an entry on the DD Form 250 for sublines/exhibit sublines which are included in and identified by numerics in the last two positions. Line item identifications not in accordance with the Uniform Contract Line Item Number System, Section XXX, will be entered without regard to positioning.

Block 16—*Stock/Part Number/Description.*

(a) Enter, as applicable, for each line item, using single spacing between each line item:

* * *

(2) On the next printing line if required by the contract for control purposes enter: the make, model, serial number, lot, batch, hazard indicator and/or similar description.

(3) On the next printing lines: the MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract, or shipping instructions followed on the same line, when more than one requisition is entered, by the unit for payment and the quantity shipped against each requisition.

Example:

V0469601850750XY19059A EA 5
N00189017760038XY3211BA EA 200
AT650803050051AAT6391J EA 1000

(4) When a TCN is assigned for each line item, enter on the next line the Transportation Control Number prefixed by "TCN".

(b) When acceptance of a service line item (as differentiating from supplies) is involved, enter a short description in no more than 27 characters. Some examples of service line items are engineering services, research and development services, training services and testing services. Do not complete Blocks 4, 13 and 14 when shipment of materiel is not involved in the service.

(c) * * *

(16) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance (additional copy furnished to the QAR) shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

* * * * *

Block 17—*Quantity Shipped/Received.*

(a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

* * * * *

Block 18—*Unit.* Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129 (Marking for Shipment and Storage). For example: LB for pound; SH for sheet.

18. UNIT
LB (SH)

Block 19—*Unit Price.* * * *

(d) Copies distributed to Foreign Military Sales Representatives in accordance with I-401, Table 2, shall be priced using actual or, if not available, estimated price.

* * * * *

Block 21—*Procurement Quality Assurance.*

* * * * *

(b) When a shipment is authorized under Alternative Release Procedure, the appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office.

(c) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the PQA and Acceptance statements. The appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the MIRR sent with shipment.

"A. ORIGIN"

* * * * *

(4) When Certificate of Conformance procedures apply and acceptance is at source, shall place an "X" in the acceptance block, and make entries required by "A. ORIGIN" (1) b, c, and d above. When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(5) [Revoked]

"B. DESTINATION"

* * * * *

(5) When "FAST PAY" is entered in Block 21A, no entries shall be made in this block.

* * * * *

I-302 *Mode of Shipment Codes.*

Code and description

* * * * *

Z—MSC (controlled/contract/arranged space).

* * * * *

I-304 *Multiple-Consignee Instructions.* * * *

(i) Blocks 2, 4, 13 and, if applicable, 14—Enter "See Attached Distribution List."

* * * * *

(iv) The DD Form 250c shall be used to list each individual "Shipped To" and "Marked For" with code(s) and complete shipping address and a sequential shipment number for each; line item number(s); quantity; MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) and quantity for each when provided in the contract or shipping instructions; and if applicable, Bill of Lading number, TCN, and Mode of Shipment Code.

* * * * *

(vi) [Revoked]

* * * * *

PART 4—DISTRIBUTION OF DD FORM 250 AND DD FORM 250c

I-401 *Distribution.*

* * * * *

TABLE 2—SPECIAL DISTRIBUTION

As required	Address	Number of copies
* * *	* * *	* * *
Navy:		
When typed code (TC) 2T or 7T is shown in Block 16.	Navy Finance Center, PAD (FPA), Washington, D.C. 20390.	2
Foreign Military Sales/Military Assistance Program (Grant Aid).	Navy International Logistics, Control Office (NAVILCO), Bayonne, N.J. 07002.	2
When shipment is consigned to another contractor's plant for a Government representative.	Navy Finance Center, PAD (FPA), Washington, D.C. 20390.	2
When Block 16 indicates the shipment includes GFP.	Navy Finance Center, PAD (FPA), Washington, D.C. 20390.	2
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps, Headquarters, USMC, Washington, D.C. 20380.	1
	Commanding General, Marine Corps Supply Activity, 1100 South Broad Street, Philadelphia, PA 19146.	3

PART 5—PREPARATION OF THE DD FORM 250-1 (LOADING REPORT)

I-501 *Instructions.* * * *

Block 1—*Tanker/Barge.* Line out "Tanker" or "Barge" as appropriate and place "X" to indicate loading report.

* * * * *

PART 7—DISTRIBUTION OF THE DD FORM 250-1

I-701 *Distribution.*

* * * * *

TABLE 3—DD FORM 250-1 DISTRIBUTION

		Number of copies			
		Loading		Discharge	
		Tanker	Barge	Tanker	Barge
On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy (attached to ullage report) in each of 4 envelopes and mark envelopes "Consignee-First Destination," "Consignee-Second Destination" etc. for delivery via the tanker.	Each consignee:				
	By mail (CONUS shipments only).	2	2	(1)	(1)
	With shipment	1	1	(1)	(1)
	Master of vessel	1	1	1	1
	Tanker or barge agent	2	2	2	2
	Contractor	(1)	(1)	(1)	(1)
	Inspector	1	1	1	1
	Cognizant inspection office	1	1	1	1
	Government representative at each destination.	1	1	1	1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Washington, D.C. 20390.	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment office	2	2	2	2
Forward only when ordering activity is other than consignee, Navy Fuel Supply Office or Defense Fuel Supply Center.	Ordering activity	1	1	1	1
Mark "Consignee copies for distribution" and airmail to each JPO receiving a portion of the cargo.	Joint Petroleum Office (see table 4)	12	1	1	1
On shipments to Japan or Korea	Airmail to CO, U.S. Army Depot Command, Japan, APO San Francisco 96343.	3	0	0	0
When one grade of product is loaded on a vessel by more than one Service each Service involved shall be furnished a copy of all loading and discharge reports.	Army Petroleum Center, Alexandria, Va. 22314.	1	1	1	1
	Navy Regional Finance Center, Property Accounting Dept. (FPA), Washington, D.C. 20390.	2	2	2	2
	Det 29 HQ SAAMA (SFML), Alexandria, Va. 22314.	1	1	1	1
Army:					
All shipments for Army	Army Petroleum Center, Alexandria, Va. 22314.	2	2	2	2
On Army MAP shipments	U.S. Army International Logistics Center, Post Office Box 2745, Harrisburg, Pa. 17105.	2	2	2	2
Navy:					
On all shipments for Navy	Navy Fuel Supply Office, Alexandria, Va. 22314.	2	1	2	1
On all Navy shipments except aircraft fuels and aircraft lubricants.	Naval Ship Systems Command, Washington, D.C. 20360.	1	1	0	0
On all Navy shipments of aircraft fuels and aircraft lubricants.	Naval Air Systems Command, Washington, D.C. 20360.	1	1	1	1
On all tanker shipments for Navy	Navy Regional Finance Center, Property Accounting (FPA), Washington, D.C. 20390.	2	0	2	0
Air Force:					
On all shipments for Air Force	Aerospace Fuels Field Office Cognizant of Shipping Point (see table 5).	1	1	0	0
On all shipments for Air Force	Aerospace Fuels Field Office Cognizant of Receiving Point (see table 5).	1	1	1	1
On the tanker shipments for Air Force (attach to ullage report).	Det 29 HQ SAAMA (SFMR), Alexandria, Va. 22314.	1	0	1	0
On all shipments for Air Force [2]	Det 29 HQ SAAMA (ACFOPA), Alexandria, Va. 22334.	1	1	1	1

[1] As required.
[2] If shipped from AF stock to other than AF distribute 2 copies in lieu of 1.

TABLE 5.—AEROSPACE FUELS FIELD OFFICES

Address	Area Served
ZONE 1	
AFFO—Det 30 HQ SAAMA (SFA), McGuire AFB, N.J. 08641.	Connecticut, Delaware, District of Columbia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, Baffin Island, Greenland, Labrador, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Newfoundland, Eastern Section of Northwest Territories.
ZONE 2	
AFFO—Det 24 HQ SAAMA (SFB), Post Office Drawer K, Lynn Haven, FL 32444.	Alabama, Florida, Georgia, Louisiana, East of Mississippi River (including cities of New Orleans and Baton Rouge), Mississippi, North Carolina, South Carolina, Tennessee.
ZONE 3	
AFFO—Det 25 HQ SAAMA (SFC), 8900 South Broadway, Building 2, St. Louis, MO 63125.	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Wyoming.
ZONE 4	
AFFO—Det 26 HQ SAAMA (SFD), Room 5626, Federal Office and Court Building, 515 Rusk Avenue, Houston, TX 77002.	Arkansas, Louisiana, West of Mississippi River (excluding cities of New Orleans and Baton Rouge), New Mexico, Oklahoma, Texas.
ZONE 5	
AFFO—Det 26 HQ SAAMA (SFE), 11550 Wilshire Boulevard, Los Angeles, CA 90025.	Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington.

[Rev. 9, ASPR, April 30, 1971; DPC 73, Item IX; DPC 74, Item I; DPC 76, Item III; DPC 77, Items I and II; DPC 79, Item I; DPC 81, Items VIII and IX; DPC 82, Item I; DPC 83, Items I, II, IV, VI, VII, VIII and IX; DPC 84, Item II; DPC 85, Items IV and V; DPC 86, Items I, II, III, and IV; and DPC 87, Items III, IV, V, and VIII] (Secs. 2202, 2301–2314, 70A Stat. 120, 127–133; 10 U.S.C. 2202, 2301–2314)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71-16043 Filed 11-3-71;8:45 am]

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

PART 45—VIETNAM SERVICE MEDAL

SUBCHAPTER C—MILITARY PERSONNEL

PART 87—DROPPING RETIRED MILITARY PERSONNEL FROM THE ROLLS OF THE ARMED FORCES

Discontinuance of Parts

1. Codification of Part 45 is discontinued. It was based on DOD Instruction 1348.15 dated October 1, 1965, which is no longer in effect.

2. Codification of Part 87 is discontinued. Part 87 was based on DOD Directive 1332.16 dated March 26, 1960, which is no longer in effect.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division OASD (Administration).

[FR Doc.71-16120 Filed 11-3-71;8:51 am]

Chapter XVIII—Office of Civil Defense, Office of the Secretary of the Army

PART 1806—OFFICIAL CIVIL DEFENSE INSIGNE

Manufacture, Reproduction and Display of Prescribed Insigne

Section 1806.5 is amended by designating the existing provisions of paragraphs (b) (8) and (9) as paragraphs (b) (9) and (10) respectively and by adding a new paragraph (b) (8) to read as follows:

§ 1806.5 Manufacture, reproduction and display of prescribed insigne.

* * * * *

(b) * * *

(8) On the merit badge for "Emergency Preparedness" designed for and as authorized and awarded by the Boy Scouts of America, together with the reproduction of such merit badge on any publication or certificate of award to be used or issued by said organization in connection therewith.

* * * * *

(64 Stat. 1254, 50 U.S.C. app. 2253; Reorg. Plan No. 1 of 1958, as amended, 72 Stat. 1799–1801, 23 F.R. 4991; E.O. 10952, as amended, 26 F.R. 6577; Establishment of the Office of Civil Defense and Delegation of Authority Regarding Civil Defense Functions, published April 10, 1964, 29 F.R. 5017)

Effective date. These amendments are effective immediately.

Dated: October 21, 1971.

JOHN E. DAVIS,
Director of Civil Defense.

[FR Doc.71-16044 Filed 11-3-71;8:45 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 34-9376]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers

The Securities and Exchange Commission announced today that it has adopted Rule 17a-13 (17 CFR 240.17a-13) under the Securities Exchange Act of 1934 ("the Act") to require a quarterly "box-count" and verification of all securities not in a broker's physical possession. At the same time the Commission has amended Rule 17a-3 (17 CFR 240.17a-3) to require the making and keeping of records with respect to stock record differences. Finally, the Commission has adopted a related proposal to amend existing Form X-17A-5 (17 CFR 249.617) with respect to stock record differences and the scope of the auditors' review.

On April 19, 1971, in Securities Exchange Act Release No. 9140 and in the FEDERAL REGISTER for April 28, 1971, at 36 F.R. 7974, the Commission published its proposal to adopt Rule 17a-13 (17 CFR 240, 17a-13), amend Rule 17a-3 (17 CFR 240.17a-3) and amend Form X-17A-5 (17 CFR 249.617). It has considered the comments and suggestions it received in response to that proposal and now adopts Rule 17a-13 (17 CFR 240.17a-13) and amendments to Rule 17a-3 (17 CFR 240.17a-3) and Form X-17A-5 (17 CFR 249.617) set forth below.

Rule 17a-13 (17 CFR 240.17a-13) applies to all members of national securities exchanges who do business with or for others than members of national securities exchanges, and to all brokers and dealers except broker-dealers who limit their business to the sale and redemption of securities of registered investment companies and interests or participations in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. However, the rule does not apply to insurance companies which are registered broker-dealers, solely by reason of their purchase and sale of securities on behalf of their general and separate accounts, provided that they otherwise meet the exemptive conditions

of the rule. The member, broker, or dealer subject to Rule 17a-13 (17 CFR 240.17a-13), must once every calendar quarter: (1) Physically examine and count all securities held (this includes firm securities and customer securities); (2) account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to his control or direction but not in his physical possession, by examination and comparison of the supporting detail records with the appropriate ledger control accounts; (3) verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than 30 days; (4) compare the results of the examination and verification with the firm's record; and (5) post the unresolved differences to the firm's books and records within 7 business days. The examination, count, verification, and comparison conducted by the firm's auditors in connection with the firm's annual report of financial condition (Form X-17A-5) may be substituted for the firm's examination, count, verification and comparison for the quarter in which the audit date falls. The quarterly examination, count, verification, and comparison are to be made no less than 2 nor more than 4 months apart. The rule specifically allows cyclical counts, whereby all locations would be counted for a specific security, and all security positions would be counted within the prescribed period. The examination, count, verification, and comparison are to be conducted or supervised by persons not normally responsible for handling securities or making the subject records.

The amendment to Rule 17a-3 (17 CFR 240.17a-3) adding a new clause (a)(4)-(F) creates a security difference account to which the unresolved long and short differences have to be posted after each examination, count, verification, and comparison, by date, showing for each security the number of shares of long or short count differences. All subsequent adjustments to the differences posted also have to be posted to this account. The other amendment to Rule 17a-3 (17 CFR 240.17a-3), a change in existing clause (a)(5), requires that the securities record which reflects all long and short securities positions also reflect the unresolved differences remaining from each of the required quarterly examinations, counts, verifications, and comparisons, and all subsequent adjustments thereto. The securities record, being the main accounting record for the location and movement of securities, should reflect these unresolved stock differences and the subsequent adjustments. Retention of the supporting documentation, required under Rule 17a-4(b)(5) (17 CFR 240.17a-4(b)(5)), is necessary so that the auditors will have adequate documentation for their review under the amendments to the audit requirements of Form X-17A-5 (17 CFR 249.617).

The final change amends Form X-17A-5 (17 CFR 249.617). This change is applicable to any form of questionnaire used by a member of a national securities exchange in lieu of Form X-17A-5. Question 13 is amended to require reporting of: The value of unresolved differences (long and short), classified in accordance with the date of their discovery; the value of long differences sold and short differences bought-in since the previous annual audit, classified in accordance with the date of their discovery; the number of securities in which there were long or short differences; and, the total number of securities in which there were positions as of the audit date. Also, the audit requirements are amended to require the accountant to review and comment on the practices and procedures employed in complying with Rule 17a-13 (17 CFR 240.17a-13) and in the resolution of differences uncovered by the procedures required by Rule 17a-13 (17 CFR 240.17a-13).

Deficiencies in the accounting system, internal control and procedures for safeguarding securities are reflected by material amounts of unresolved security differences, suspense balances, unverified transfer items and differences in dividend accounts which represent potential losses. The extent of such deficiencies or the absence of appropriate provisions for estimated losses may require the independent public accountant to qualify or disclaim an opinion on the financial statements.

Rule 17a-13 (17 CFR 240.17a-13) establishes a minimum standard of control over securities for all subject members, brokers, and dealers. The rule is not intended to discourage the practice of certain brokers and dealers who examine, count, verify, and compare their securities more frequently than once a calendar quarter. The Commission encourages all brokers and dealers to make such additional examinations, counts, verifications and comparisons as good business practice would require, and as are necessary and appropriate to comply with the requirements from time to time of the self-regulatory organizations.

Commission action: The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, particularly sections 17(a) and 23(a) thereof, and deeming it necessary for the exercise of the functions vested in it, and necessary and appropriate in the public interest and for the protection of investors, hereby amends Parts 240 and 249 of Chapter II of Title 17 of the Code of Federal Regulations by adopting § 240.17a-13 and amending §§ 240.17a-3 and 249.617 as set forth below, effective January 1, 1972.

§ 240.17a-13 Quarterly security counts to be made by certain exchange members, brokers, and dealers.

(a) This section shall apply to every member of a national securities exchange who transacts a business in securities directly with or for others than members of a national securities exchange, every broker or dealer (other than a member) who transacts a business in securities through the medium of any member of a national securities exchange, and every broker or dealer registered pursuant to section 15 of the Act; except that a broker or dealer meeting all of the following conditions shall be exempt from the provisions of this section:

(1) His dealer transactions (as principal for his own account) are limited to the purchase, sale, and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(2) His transactions as broker (agent) are limited to: (i) The sale and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; (ii) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (iii) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(3) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

Notwithstanding the foregoing, this rule shall not apply to any insurance company which is a registered broker-dealer, and which otherwise meets all of the conditions in subparagraphs (1), (2), and (3) of this paragraph, solely by reason of its participation in transactions that are a part of the business of insurance, including the purchasing, selling, or holding of securities for or on behalf of such company's general and separate accounts.

(b) Any member, broker, or dealer who is subject to the provisions of this rule shall at least once in each calendar quarter-year:

(1) Physically examine and count all securities held;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver, or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver, or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than 30 days;

(4) Compare the results of the count and verification with his records; and

(5) Record on the books and records of the member, broker, or dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than 7 business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (c) of this section. *Provided, however,* That such procedures need not be carried out by the member, broker, or dealer for the calendar quarter-year during which the date of his annual report of financial condition (pursuant to § 240.17a-5) falls, and further provided, that no examination, count, verification, and comparison for the purpose of this section shall be within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made hereunder.

(c) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than 1 calendar quarter-year, and no security shall be examined, counted, verified, or compared for the purpose of this rule less than 2 months or more than 4 months after a prior examination, count, verification, and comparison.

(d) The examination, count, verification, and comparison shall be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

(e) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any member, broker, or dealer who satisfies the Commission that it is not necessary in the public interest and for the protection of investors to subject the particular member, broker, or dealer to certain or all of the provisions of this section, because of the special nature of his business, the safeguards he has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

Amendment to Form X-17A-5 (17 CFR 249.617):

Form X-17A-5 [§ 249.617 of this chapter] is amended by: (1) Adding at the end of the first paragraph of question 13, preceding the language "and other accounts not specifically mentioned herein.", the following new language: "long security count difference valuations; short security count difference valuations;" (2) adding new notes 2 and 3 immediately following note 1; (3) adding to the last sentence of the section entitled Audit Requirements immediately preceding the words "and shall indicate any corrective action taken or proposed.", the following new language ": (a) The accounting system; (b) the internal accounting control; (c) procedures for safeguarding securities; (d) the practices and procedures employed in complying with § 240.17a-13 of this chapter and in the resolution of securities differences;" and (4) adding a new paragraph (9) to the section entitled "Audit Requirements."

As so amended, question 13 of Form X-17A-5 would read as follows:

State details (ledger balances, valuations of securities and spot (cash) commodities; status of future commodity positions and any other relevant information) of any accounts which have not been included in one of the answers to the above questions. These shall include: Accounts for exchange memberships; furniture, fixtures and other fixed assets; valuation reserves; funds provided or deposited by the respondent as margin in joint accounts; revenue stamps; dividends receivable, payable, and unclaimed; floor brokerage receivable and payable; commissions receivable and payable; advances to salesmen and other employees; commodity difference account; goodwill; organization expense; prepaid expenses and deferred charges; liability reserves; mortgage payable; other liabilities and deferred credits; market value of securities borrowed (other than for delivery against customers' sales) to the extent to which no equivalent value is paid or credited; long security count difference valuations; short security count difference valuations; and other accounts not specifically mentioned herein.

NOTE 1: Any liability reported under this question secured by collateral in any form shall be identified by reference to the related collateral.

NOTE 2: State in a footnote (a) long security count difference valuations and short security count difference valuations classified in accordance with the date of the physical count and verification pursuant to Rule 17a-5 (§ 240.17a-5) or 17a-13 (§ 240.-17a-13) in which they were discovered, and (b) the value of long security count differences sold and short security count differences bought in to resolve differences since the last report on Form X-17A-5 (§ 249.617) classified in accordance with the date that the related differences were discovered.

NOTE 3: State in a footnote the number of securities in which there were long security count differences; the number in which there were short security count differences; and the total number of securities in which there were positions as of the audit date.

AUDIT REQUIREMENTS

The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the prior examination date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities and securities and commodities positions as of the date of the responses to the financial questionnaire and to permit the expression of an opinion by the independent public accountant as to the financial condition of the respondent at that date. Based upon such audit, the accountant shall comment upon any material inadequacies found to exist in: (a) The accounting system; (b) the internal accounting control; (c) procedures for safeguarding securities; (d) the practices and procedures employed in complying with Rule 17a-13 (§ 240.17a-13) and in the resolution of securities differences; and shall indicate any corrective action taken or proposed.

(9) Review the practices and procedures employed for the making of the securities examinations, counts, verifications, comparisons, and the recordation of differences required by Rule 17a-13 (§ 240.17a-13) and the methods employed in the resolution of the differences uncovered.

As amended, subparagraphs (4) and (5) of § 240.17a-3(a) will read as follows:

§ 240.17a-3 Records to be made by certain exchange members, brokers, and dealers.

(a) * * *

(4) Ledgers (or other records) reflecting the following:

* * * * *

(vi) All long and all short stock record differences arising from the examination, count, verification, and comparison pursuant to §§ 240.17a-3 and 240.17a-5 of this chapter (by date of examination, count, verification, and comparison showing for each security the number of long and short count differences),

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such member, broker, or dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(Secs. 17(a), 23(a), 48 Stat. 897, 901, as amended, 49 Stat. 1379, secs. 4, 8, 52 Stat. 1076, sec. 5, 15 USC 78q, 78w)

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16086 Filed 11-3-71;8:49 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Agency Authority To Take Personnel Actions in a National Emergency

Subpart D of Part 230 is amended by adding a new § 230.402 to provide authority for agencies to make emergency-indefinite appointments. The new section, which is effective November 4, 1971, reads as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *Basic authority.* In a national emergency, the Commission may authorize an agency to make emergency-indefinite appointments to continuing positions (normally those expected to last longer than a year) when it is not in the public interest to make career or career-conditional appointments. Except as provided by paragraphs (b) and (c) of this section, the agency shall make appointments under this authority from appropriate registers of eligibles as long as there are available eligibles.

(b) *Appointment outside the register.* Unless the Commission specifies otherwise, an agency authorized to make emergency-indefinite appointments under this section may make these appointments outside registers of eligibles without specific prior approval when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of the conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(c) *Appointment noncompetitively.* An agency authorized to make emergency-indefinite appointments under this section may give the following classes of persons emergency-indefinite appointments without regard to civil service registers and the provisions in § 333.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency in accordance with applicable requirements of the Commission;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and implementing instructions of the Office of Emergency Preparedness; and

(3) Former Federal employees eligible for reinstatement.

(d) *Tenure of emergency-indefinite employees.* (1) An emergency-indefinite employee does not acquire a competitive status on the basis of his emergency-indefinite appointment.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which authorized unless the Commission orders its termination earlier.

(e) *Trial period.* (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

(f) *Eligibility for within-grade increases.* An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

(g) *Application of other regulations.* (1) The term "indefinite employee" as used in the following includes an emergency-indefinite employee: Section 316.801, Part 351, Part 353, Subpart G of Part 550, and Part 752 of this chapter.

(2) The selection procedures of Part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (b) of this section.

(3) Despite the provisions in § 831.201 (a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of § 831.201 of this chapter.

(h) *Promotion, demotion, or reassignment.* (1) An agency may promote, demote, or reassign an emergency-indefinite employee to any position to which the Commission has authorized it to make emergency-indefinite appointments.

(5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp., p. 218)

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

[FR Doc.71-16225 Filed 11-3-71;9:58 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71-598]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the reference to the State of Texas in the introductory portion of paragraphs (e) and (e)(1) relating to the State of Texas are deleted, and paragraph (f) is amended by adding thereto the name of the State of Texas.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f, 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment excludes portions of Tom Green County in Texas from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the excluded areas. No areas in Texas remain under the quarantine.

The amendment adds Texas to the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are applicable to Texas.

Insofar as the amendment relieves certain restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera, it must be made effective immediately to be of maximum benefit to affected persons. Insofar as it imposes restrictions it should be made effective promptly in order to prevent the spread of hog cholera. It does not appear that public participation in this rule making proceeding would make additional relevant information available to this Department. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 29th day of October 1971.

F. J. MULHERN,
Acting Administrator, Agricultural Research Service.

[FR Doc.71-16076 Filed 11-3-71;8:48 am]

[Docket No. 71-599]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act

of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, paragraph (f) is amended by adding thereto the name of the State of Indiana.

2. In § 76.2, the reference to the State of Connecticut in paragraph (f) is deleted, and paragraph (g) is amended by adding thereto the name of the State of Connecticut.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments add Indiana to the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are applicable to Indiana.

The amendments delete Connecticut from the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are no longer applicable to Connecticut. Further, the amendments add Connecticut to the list of hog cholera free States in § 76.2(g), and the special provisions pertaining to the interstate movement of swine and swine products from or to such free States are applicable to Connecticut.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to this Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 29th day of October 1971.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[FR Doc.71-16153 Filed 11-3-71;8:54 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-SO-147]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On September 21, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 18751), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Auburn, Ala., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 6, 1972, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the Auburn, Ala., transition area is amended to read:

AUBURN, ALA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Auburn-Opelika Airport (lat. 32°27'00" N., long. 85°26'00" W.); within 2 miles each side of the extended centerline of runway 18/36, extending from the 5-mile radius area to 6 miles N. of the runway end; within 5 miles each side of Tuskegee VORTAC 056° radial, extending from the 5-mile radius area to the VORTAC; within 5 miles each side of Columbus VORTAC 270° radial, extending from the 5-mile radius area to 11.5 miles W. of the VORTAC; excluding the portion that coincides with the Columbus, Ga., transition area.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); secs. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on October 27, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-16107 Filed 11-3-71;8:52 am]

[Airspace Docket No. 71-RM-24]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the description of the Denver, Colo., transition area.

The Federal Aviation Administration plans to convert the Hugo VOR to a VORTAC to permit use of this navaid by TACAN-only equipped aircraft and to provide DME capability for air traffic control purposes. A study conducted on the conversion of the Hugo VOR facility to a VORTAC revealed that relocation of this facility closer to an available three-phase power supply would substantially reduce initial and recurring costs for converting and operating this navaid as a VORTAC. Therefore, the agency plans to relocate the Hugo facility approximately 12 miles west-southwest of the existing site on December 9, 1971. The relocation of Hugo VOR requires an amendment to the description of the Denver, Colo., transition area.

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing in § 71.181 (36 F.R. 2140), the description of the Denver, Colo., transition area is amended in part as follows:

In the text of the 7,500-foot portion of the transition area delete * * * "on the south by latitude 39°05'00" N." * * * and substitute * * * "on the south by the east edge of V263 and latitude 39°05'00" N."

Effective date. This amendment shall be effective 0901 G.m.t., December 9, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Aurora, Colo., on October 27, 1971.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.71-16105 Filed 11-3-71;8:52 am]

[Airspace Docket No. 71-SO-146]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On September 21, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 18751), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation regulations that would designate the Haleyville, Ala., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation regulations is amended, effective 0901 G.m.t., January 6, 1972, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the following transition area is added:

HALEYVILLE, ALA.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Haleyville Municipal Airport (lat. 34°16'40" N., long. 87°36'05" W.); within 5 miles each side of Hamilton VORTAC 077° radial, extending from the 5.5-mile radius area to 11.5 miles E. of the VORTAC.

(Sec. 307(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on October 27, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-16106 Filed 11-3-71;8:52 am]

[Docket No. 11478; Amdt. 103-10]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

Transportation of Fusees

On April 22, 1970, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-46; Notice 70-7 (35 F.R. 6439) proposing to reclassify railway and highway fusees from Explosive C to the Flammable solid classification. By a separate document published at page 21201 of this issue, the Hazardous Materials Regulations Board issued an amendment to the Department's Hazardous Materials Regulations contained in Title 49 of the Code of Federal Regulations. For the reason stated in the document, a change is being made in Part 103 of the Federal Aviation Regulations.

In consideration of the foregoing, 14 CFR Part 103 is amended as follows:

In § 103.7, paragraph (b)(7) is added, as follows:

§ 103.7 Passenger-carrying aircraft.

* * * * *

(b) * * *

(7) Fusees (railway and highway), with a net weight of not more than 50 pounds in each outside container.

(Title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

This amendment is effective December 31, 1971.

Issued in Washington, D.C., on October 29, 1971.

JAMES F. RUDOLPH,
Board Member for the Federal Aviation Administration.

[FR Doc.71-16135 Filed 11-3-71;8:53 am]

[Docket No. 9938; Amdt. 103-9]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

Reports of Incidents Involving Radioactive Materials

The purpose of this amendment to Part 103 of the Federal Aviation Administration's regulations is to make reporting requirements for incidents involving radioactive materials consistent with reporting requirements applicable to other hazardous materials.

This amendment is based on a notice of proposed rule making, Docket No. 9938; Notice No. 71-19, published in the FEDERAL REGISTER on July 9, 1971 (36 F.R. 12913). That notice was issued concurrently with a notice issued by the Hazardous Materials Regulations Board. The Board's evaluation of the comments received is discussed in detail in the document published on page 21200 of this issue. For the reasons stated therein, the Federal Aviation Administration has decided to amend Part 103 of the Federal Aviation Administration regulations.

It should be emphasized that the reporting requirements for radioactive materials transportation incidents as established by the Board in this amendment are in no way intended to replace or impair the existing national system for obtaining emergency radiological assistance in the event of incidents involving radioactive materials. That system, which is intended to provide response capabilities for radiological monitoring in emergencies, is administered by the U.S. Atomic Energy Commission and supported by the capabilities of other Federal and State organizations. Further information on that system may be obtained from the U.S. Atomic Energy Commission, Division of Operational Safety, Washington, D.C. 20545.

In consideration of the foregoing, 14 CFR Part 103 is amended as follows:

(A) In § 103.23, paragraph (b) is amended to read as follows:

§ 103.23 Special requirements for radioactive materials.

* * * * *

(b) In addition to the reporting requirements of § 103.28, the carrier must also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Aircraft in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination (see 49 CFR 173.397). In these instances, the package or materials should be segregated as far as practicable from personnel contact. If radiological advice or assistance is needed, the U.S. Atomic Energy Commission should also be notified. In case of obvious leakage, or if it appears likely that the inside container may have been damaged care should be taken to avoid inhalation, ingestion, or contact with the radioactive materials. Any loose radioactive materials should be left in a segregated area pending disposal instructions from qualified persons.

(B) In § 103.28, paragraph (a)(5) is added to read as follows:

§ 103.28 Reporting certain dangerous article incidents.

(a) * * *

(5) Fire, breakage, or spillage or suspected radioactive contamination occurs involving shipment of radioactive materials (see also § 103.23(b)).

* * * * *

(Title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430 and 1472(h))

This amendment is effective December 31, 1971.

Issued in Washington, D.C., on October 29, 1971.

JAMES F. RUDOLPH,
Board member for the Federal Aviation Administration.

[FR Doc.71-16134 Filed 11-3-71;8:53 am]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 10, Amdt. 10]

PART 121—SMALL BUSINESS SIZE STANDARDS

Size Standards Policy

Section 121.3-1 of Part 121, of Chapter I of Title 13 of the Code of Federal Regulations is hereby amended by:

1. Renumbering paragraphs (b) (2), (3), and (4) respectively as (b) (3), (4), and (5), and

2. Inserting new paragraph (b)(2) to read as follows:

§ 121.3-1 Purpose and method of establishing size standards.

* * * * *

(b) *Method of establishing size standards.* * * *

(2) *Size standards policy.* (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.

(ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive.

(iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella.

(iv) It is the Small Business Administration's view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard, should compete for

Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance.

* * * * *

Effective date. This amendment shall become effective on publication in the FEDERAL REGISTER (11-4-71).

Dated: October 27, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-16077 Filed 11-3-71;8:48 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

USE OF ANTIBIOTIC DRUGS IN ANIMALS

In the FEDERAL REGISTER of April 9, 1969 (34 F.R. 6284), the Commissioner of Food and Drugs proposed (1) certain new food additive regulations for certifiable oral antibiotic drugs intended for use in food-producing animals, (2) certain amendments to the antibiotic drug regulations to provide that those antibiotics which were not covered by existing or proposed food additive regulations would not be eligible for certification when intended for use in animals raised for food production, and (3) the revocation of exemptions from certification for antibiotic drugs intended for such use.

The basis upon which such action was proposed is contained in a statement of policy, § 3.25 *Antibiotics used in food-producing animals,* published April 11, 1968 (33 F.R. 5616), which stated that (1) all such products are food additives and accordingly may be used only when provided for by an appropriate food additive regulation (subsequently the Animal Drug Amendments of 1968 redefined such substances as new animal drugs under the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act), and (2) that antibiotic preparations, other than those for topical or ophthalmic use, intended for use in food-producing animals and which are not covered by appropriate regulations will be subject to regulatory action within 180 days after publication of the contemplated final orders.

The comments received in response to the proposal have been evaluated, as follows:

1. A request that soluble forms of bacitracin should be included in the new animal drug regulations to provide for their continued use in drinking water was supported by the submission of data and labeling for such products. The Commissioner has concluded that the data is adequate to insure that edible products from treated animals are safe for human consumption.

2. It was requested that the 21-day limitation on the administration of tetracycline in the drinking water of swine be deleted. An evaluation of available data establishes that the 21-day restriction is not required since longer administration of the drug by this route would not result in increased tissue residues.

3. It was requested that the administration of tetracycline boluses to calves and sheep be permitted in two divided daily doses rather than in four, as proposed. The Commissioner concludes that administration of two divided daily doses should be permitted.

4. It was requested that tolerances for residues of tetracycline in edible tissues of animals be established at the same levels as those for chlortetracycline. The Commissioner has concluded that sufficient data are not available to provide for other than negligible residues of tetracycline.

5. It was requested that a prescription not be required for the use of tetracycline boluses in calves. The Commissioner concludes that, when more than 10 days is required to deplete the tissues of tetracycline drug residues, such drugs should be available only on a prescription basis.

6. It was requested that the withdrawal period for soluble tetracycline in poultry be reduced from 4 to 2 days. An evaluation of the available data shows that at 3 days residues remain in some edible products; however, at 4 days no residues were shown. Therefore, the 4-day withdrawal period is retained.

7. It was requested that tetracycline hydrochloride be restricted only from use in chickens producing eggs for food purposes instead of from use in all laying chickens, as proposed. The Commissioner concludes that the data are adequate to substantiate this request.

8. There was opposition to the provisions deleting the exemptions from certification for antibiotic drugs intended for use in animals raised for food production. The Commissioner has considered these comments and has concluded that certification should be required for these drugs in order to permit determination of their safety and efficacy as related to their compliance with the required labeling and standards of identity, strength, quality, and purity. The Commissioner has concluded that a period of 90 days should be provided to permit the preparation and submission of appropriate applications under the provisions of section 512(b) of the act. He further concludes that such drugs would become subject to certification 180 days after publication of this order in the FEDERAL REGISTER. Certification would be an interim measure following which exemptions may be granted on an individual basis under section 512(n)(3) of the act.

The claims provided for the preparations described below are on the basis of prior use and may be subject to change upon a determination of their effectiveness by the National Academy of Sciences-National Research Council, Drug Efficacy Study Group.

The Commissioner concludes, on the basis of all the information available to him, that the proposed amendments should be promulgated incorporating the various changes indicated by his above-stated conclusions.

A. Accordingly, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135c and 135g are amended, as follows:

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

1. In § 135c.2(e) by adding new items 7, 8, and 9 to table 1 and by adding a new table 3 consisting of one item, as follows:

§ 135c.2 Chlortetracycline.

* * * * *

(e) * * *

TABLE 1—IN DRINKING WATER

	Milligrams per gallon	Limitations	Indications for use
* * *	* * *	* * *	* * *
7. Chlortetracycline.	100-200	For swine; as chlortetracycline hydrochloride; administer for not more than 46 days; do not slaughter animals for food within 24 hours of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.	As an aid in prevention of bacterial enteritis.
8. Chlortetracycline.	200-400	do	As an aid in prevention of bacterial pneumonia; for treatment of bacterial enteritis.
9. Chlortetracycline.	400-600	For swine; as chlortetracycline hydrochloride; administer for not more than 24 days; do not slaughter animals for food within 24 hours of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.	For treatment of bacterial pneumonia.

* * * * * * *

TABLE 3—FOR MISCELLANEOUS USE

Principal ingredient	Amount	Limitations	Indications for use
1. Chlortetracycline.	2 mg. per lb. body weight.	For calves; as chlortetracycline hydrochloride; as a drench administer 2 mg. per lb. body weight per day for not more than 5 days; do not slaughter animals for food within 3 days of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.	For treatment of bacterial pneumonia, bacterial diarrhea, and shipping fever.

2. By adding the following new sections to Part 135c:

§ 135c.34 Tetracycline oral veterinary.

(a) *Specifications.* Tetracycline is each of the several antibiotic substances produced by hydrogenation of chlortetracycline, and each of the same substances produced by any other means is a kind of tetracycline.

(b) *Sponsor.* See codes Nos. 030 and 037 in § 135.501(c) of this chapter.

(c) *Special considerations.* The quantity of tetracycline in paragraph (e) of this section refers to the activity of tetracycline hydrochloride.

(d) *Related tolerances.* See § 135g.72 of this chapter.

(e) *Conditions of use.* It is used as follows:

TABLE 1—IN A SOLUBLE POWDER

	Amount	Limitations	Indications for use
	Mg. per day		
1. Tetracycline	62	For newborn pigs; as tetracycline hydrochloride water or milk; administer for not more than 3 days; do not slaughter animals for food purposes within 4 days of treatment; prepare a fresh solution daily, as sole source of tetracycline.	For treatment of bacterial enteritis and bacterial pneumonia.
	Mg. per gal.		
2. Tetracycline	100-200	For swine; as tetracycline hydrochloride in drinking water; do not slaughter animals for food purposes within 4 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.	As an aid in prevention of bacterial enteritis.
3. Tetracycline	200-400	do	As an aid in prevention of bacterial pneumonia; for treatment of bacterial enteritis.
4. Tetracycline	400	do	For treatment of bacterial pneumonia.
5. Tetracycline	100-200	For calves; as tetracycline hydrochloride in drinking water; administer for not more than 5 days; do not slaughter animals for food purposes within 5 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.	As an aid in prevention of bacterial diarrhea, bacterial pneumonia, and shipping fever (hemorrhagic septicemia).
6. Tetracycline	200-400	For calves; as tetracycline hydrochloride in drinking water; administer for not more than 5 days; do not slaughter animals for food purposes within 5 days of treatment; prepare fresh solution daily; as sole source of tetracycline.	For treatment of bacterial diarrhea, bacterial pneumonia, and shipping fever (hemorrhagic septicemia).
7. Tetracycline	100-200	For turkeys and chickens; as tetracycline hydrochloride in drinking water; administer for not more than 21 days; do not slaughter birds for food within 4 days of treatment; not for use in chickens and turkeys producing eggs for human consumption; prepare fresh solution daily; as sole source of tetracycline.	As an aid in prevention of chronic respiratory disease (air-sac infection), hexamitiasis, blue comb (nonspecific enteritis), infectious sinusitis, and synovitis.
8. Tetracycline	200-400	do	For treatment of chronic respiratory disease (air-sac infection), hexamitiasis, blue comb (nonspecific enteritis), infectious sinusitis, and synovitis.

TABLE 2—IN BOLUSES

	Milligrams per bolus	Limitations	Indications for use
1. Tetracycline	500	For calves; as tetracycline hydrochloride; administer orally 10 mg. per lb. of body weight per day divided into two daily doses for not more than 5 days; do not slaughter animals for food within 12 days of treatment; as sole source of tetracycline; for use by or on the order of a licensed veterinarian.	For treatment of pneumonia, shipping fever, and pneumoenteritis.
2. Tetracycline	500	For sheep; as tetracycline hydrochloride; administer orally 10 mg. per lb. of body weight per day divided into two daily doses for not more than 4 days; do not slaughter animals for food within 5 days of treatment; as sole source of tetracycline.	For treatment of pneumonia, shipping fever, pneumoenteritis complex, and bacterial enteritis (scours).

§ 135c.35 Bacitracin oral veterinary.

(a) *Specifications.* Bacitracin is the antibiotic substance produced by growth of *Bacillus subtilis var. Tracy* or the same antibiotic substance produced by other means, and for the purpose of this section refers to bacitracin or feed grade bacitracin.

(b) *Sponsor.* See code No. 042 in § 135.501(c) of this chapter.

(c) *Special considerations.* Antibiotic activities authorized are expressed in this section in terms of the weight of the appropriate antibiotic standard.

(d) *Related tolerances.* See § 135g.4 of this chapter.

(e) *Conditions of use.* It is used as follows:

IN DRINKING WATER

	Amount	Limitations	Indications for use
	Mg. per gal.		
1. Bacitracin	100-200	For chickens; prepare a fresh solution daily	Prevention of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
2. Bacitracin	100-200	For turkeys; prepare a fresh solution daily	Prevention of infectious sinusitis; blue comb (mud fever).
3. Bacitracin	200-1000	For chickens; prepare a fresh solution daily	Treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
4. Bacitracin	200-1000	For turkeys; prepare a fresh solution daily	Treatment of infectious sinusitis; blue comb (mud fever).
5. Bacitracin	100-200	For swine; prepare a fresh solution daily	Aid in prevention of bacterial swine enteritis (scours).
6. Bacitracin	200	do	Treatment of bacterial swine enteritis (scours).

§ 135c.36 Zinc bacitracin oral veterinary.

(a) *Specifications.* Zinc bacitracin is the zinc salt of the antibiotic substance produced by growth of *Bacillus subtilis var. Tracy* or the same antibiotic substance produced by any other means, and for the purposes of this section refers to zinc bacitracin or feed grade zinc bacitracin.

(b) *Sponsor.* See code No. 009 in § 135.501(c) of this chapter.

(c) *Special considerations.* Quantities of zinc bacitracin expressed in paragraph (e) of this section refer to the weight of an appropriate antibiotic standard.

(d) *Related tolerances.* See § 135g.4 of this chapter.

(e) *Conditions of use.* It is used as follows:

IN DRINKING WATER

	Milligrams per gallon	Limitations	Indications for use
1. Zinc bacitracin	100-200	For chickens; prepare a fresh solution daily	Prevention of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
2. Zinc bacitracin	100-200	For turkeys; prepare a fresh solution daily	Prevention of infectious sinusitis; blue comb (mud fever).
3. Zinc bacitracin	200-1000	For chickens; prepare a fresh solution daily	Treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
4. Zinc bacitracin	200-1000	For turkeys; prepare a fresh solution daily	Treatment of infectious sinusitis; blue comb (mud fever).
5. Zinc bacitracin	100-200	For swine; prepare a fresh solution daily	Aid in prevention of bacterial swine enteritis (scours).
6. Zinc bacitracin	200	....do	Treatment of bacterial swine enteritis (scours).

§ 135c.37 Bacitracin methylene disalicylate oral veterinary.

(a) *Specifications.* Bacitracin methylene disalicylate is the methylene disalicylate salt of the antibiotic substance produced by growth of *Bacillus subtilis var. Tracy* or the same antibiotic substance produced by any other means and, for the purposes of this section, refers to bacitracin methylene disalicylate or feed grade bacitracin methylene disalicylate.

(b) *Sponsor.* See code No. 028 in § 135.501(c) of this chapter.

(c) *Special considerations.* Antibiotic activities authorized in paragraph (e) of this section are expressed in terms of the weight of the appropriate antibiotic standard.

(d) *Related tolerances.* See § 135g.4 of this chapter.

(e) *Conditions of use.* It is used as follows:

IN DRINKING WATER

	Milligrams per gallon	Limitations	Indications for use
1. Bacitracin methylene disalicylate.	100-200	For chickens; prepare a fresh solution daily	Prevention of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
2. Bacitracin methylene disalicylate.	100-200	For turkeys; prepare a fresh solution daily	Prevention of infectious sinusitis; blue comb (mud fever).
3. Bacitracin methylene disalicylate.	200-400	For chickens; prepared a fresh solution daily	Treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis).
4. Bacitracin methylene disalicylate.	200-400	For turkeys; prepare a fresh solution daily	Treatment of infectious sinusitis; blue comb (mud fever).
5. Bacitracin methylene disalicylate.	100-200	For swine; prepare a fresh solution daily	Aid in prevention of bacterial swine enteritis (scours).
6. Bacitracin methylene disalicylate.	200	....do	Treatment of bacterial swine enteritis (scours).

PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. By adding the following new section to Part 135g:

§ 135g.72 Tetracycline.

A tolerance of 0.25 part per million is established for negligible residues of tetracycline in uncooked edible tissues of calves, swine, sheep, chickens, and turkeys.

B. Pursuant to provisions of the act (sec. 512(n), 82 Stat. 350-51; 21 U.S.C. 360b(n)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 146c, 146d, and 146e are amended, as follows:

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

1. By revising § 146c.204(c)(2) to read as follows:

§ 146c.204 Chlortetracycline hydrochloride capsules; tetracycline hydrochloride capsules; tetracycline capsules; tetracycline phosphate complex capsules.

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

2. In § 146c.205 by deleting paragraph (f) and revising paragraph (c)(2) to read as follows:

§ 146c.205 Chlortetracycline powder (chlortetracycline hydrochloride powder); tetracycline hydrochloride powder; tetracycline powder.

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* (i) Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity.

(ii) If it is intended for use in animals raised for food production, it shall also be labeled in accordance with the requirements of regulations in Parts 121 and 135c of this chapter.

* * * * *

(f) [Deleted]

3. By revising § 146c.207(a) to read as follows:

§ 146c.207 Chlortetracycline hydrochloride tablets; tetracycline hydrochloride tablets; tetracycline tablets.

(a) Chlortetracycline hydrochloride tablets, tetracycline hydrochloride tablets, and tetracycline tablets are tablets that conform to all requirements and are subject to all procedures prescribed by § 146c.204 for chlortetracycline hydrochloride capsules, tetracycline hydrochloride capsules, and tetracycline capsules, except that:

(1) The average moisture content of the tablets is not more than 3 percent, unless the person who requests certification has submitted to the Commissioner information adequate to prove that his drug is stable when it has a moisture content not exceeding 6 percent.

(2) In addition to the requirements prescribed by § 146c.204, tablets not exceeding 15 millimeters in diameter, or not intended only for use in preparing solutions, shall disintegrate within 1 hour. A person who requests certification shall therefore also submit for disintegration-time studies, results of this test made by him and a sample of six tablets.

(3) If it is intended for use in animals raised for food production, it shall be labeled in accordance with the requirements of regulations in Part 135c of this chapter.

* * * * *

4. By revising § 146c.211(c)(2) to read as follows:

§ 146c.211 Chlortetracycline surgical powder (chlortetracycline hydrochloride surgical powder); tetracycline hydrochloride surgical powder.

* * * * *

(c) * * *

(2) *It is packed for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal Law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and, if it is intended for other than topical use, the statements, "Warning: Not for use in animals which are raised for food production."

* * * * *

5. By revising § 146c.212(c)(2) to read as follows:

§ 146c.212 Chlortetracycline suppositories (chlortetracycline hydrochloride suppositories); tetracycline hydrochloride suppositories.

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

6. By revising § 146c.215(c)(2) to read as follows:

§ 146c.215 Chlortetracycline with vasoconstrictor (chlortetracycline hydrochloride with vasoconstrictor); chlortetracycline with _____ (chlortetracycline hydrochloride with _____) (the blank being filled in with the established name of the vasoconstrictor).

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

7. By revising § 146c.217(c)(2) to read as follows:

§ 146c.217 Chlortetracycline calcium syrup (chlortetracycline calcium oral drops); tetracycline syrup (tetracycline oral drops); tetracycline magnesium syrup (tetracycline magnesium oral drops).

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

8. In § 146c.219 by deleting paragraph (f) and by revising paragraphs (a) and (c)(2) to read as follows:

§ 146c.219 Crude chlortetracycline oral veterinary.

(a) *Standards of identity, strength, quality, and purity.* Crude chlortetracycline oral veterinary is crude chlortetracycline with suitable and harmless diluents, with or without buffer substances and suspending and dispersing agents (and with or without one or more essential vitamins and mineral substances for nutritive purposes). It contains not less than 2 grams of chlortetracycline activity per pound, except it shall contain 100 grams of chlortetracycline activity per pound if it is intended for use in the treatment of psittacosis in psittacine birds (parrots, macaws, and cockatoos). Its moisture content is not more than 6 percent.

* * * * *

(c) * * *

(2) On the circular or other labeling within or attached to the package:

(i) Adequate directions and warnings for the veterinary use of such drug by the laity.

(ii) If it is intended for use in animals raised for food production, labeling in accordance with the requirements of regulations in Parts 121 and 135c of this chapter.

* * * * *

(f) [Deleted]

9. By revising § 146c.222(c)(2) to read as follows:

§ 146c.222 Tetracycline hydrochloride oral suspension (tetracycline hydrochloride homogenized mixture); tetracycline phosphate complex oral suspension (tetracycline phosphate complex oral drops); tetracycline hydrochloride oral solution; tetracycline calcium oral suspension; tetracycline oral suspension.

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

10. By revising § 146c.226(c)(2) to read as follows:

§ 146c.226 Tetracycline and vasoconstrictor suspension; tetracycline and _____ (the blank being filled in with the established name of the vasoconstrictor) suspension.

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

11. By adding to § 146c.228 a new paragraph (b), as follows:

§ 146c.228 Chlortetracycline hydrochloride-neomycin tablets veterinary; tetracycline hydrochloride-neomycin tablets veterinary.

* * * * *

(b) If it is intended for use in animals which are raised for food production, it shall also be labeled in accordance with the requirements of Part 135c of this chapter.

* * * * *

12. By revising the introductory text of § 146c.236 to read as follows:

§ 146c.236 Tetracycline-nystatin for oral suspension.

Tetracycline-nystatin for oral suspension conforms to all requirements and procedures prescribed by § 146c.205 for tetracycline powder intended for use by man, except that:

* * * * *

13. By revising § 146c.252(c)(2) to read as follows:

§ 146c.252 Capsules demeclocycline hydrochloride.

* * * * *

(c) * * *

(2) *If it is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

14. In § 146c.265(c) by deleting subparagraph (1)(iv) and by adding a new subparagraph (2), as follows:

§ 146c.265 Chlortetracycline bisulfate soluble powder veterinary.

* * * * *

(c) * * *

(1) * * *

(iv) [Deleted]

* * * * *

(2) On the circular or other labeling within or attached to the package:

(i) Adequate directions and warnings for the veterinary use of such drug by the laity.

(ii) If it is intended for use in animals raised for food production, labeling in accordance with the requirements of regulations in Part 135c of this chapter.

* * * * *

PART 146d—CERTIFICATION OF CHLORAMPHENICOL AND CHLORAMPHENICOL - CONTAINING DRUGS

15. By revising § 146d.302(c)(2) to read as follows:

§ 146d.302 Chloramphenicol capsules.

* * * * *

(c) * * *

(2) *If it is intended solely for veterinary use.* Its label and labeling shall comply with all the requirements of subparagraph (1) of this paragraph except subdivisions (i)(*a*) and (ii), and in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter (regulations issued under section 502(f) of the act) and bear on its label and labeling the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

16. By revising § 146d.303(c)(2) to read as follows:

§ 146d.303 Chloramphenicol ointment (chloramphenicol cream).

* * * * *

(c) * * *

(2) *If it is intended solely for veterinary use.* Its label and labeling shall comply with all the requirements of subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," it shall be labeled in accordance with requirements prescribed by § 1.106(c) of this chapter (regulations issued under section 502(f) of the act) and bear on its label and labeling the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

17. By revising § 146d.306(c)(2) to read as follows:

§ 146d.306 Chloramphenicol palmitate and suspension.

* * * * *

(c) * * *

(2) *If it is intended solely for veterinary use.* Its label and labeling shall comply with all the requirements of subparagraph (1) of this paragraph, except subdivisions (i)(*a*) and (ii), and in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter (regulations issued under section 502(f) of the act) and bear on its label and labeling the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

18. By revising § 146d.308(c)(2) to read as follows:

§ 146d.308 Chloramphenicol otic; chloramphenicol topical.

* * * * *

(c) * * *

(2) *If it is intended solely for veterinary use.* Its label and labeling shall comply with all the requirements of subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," it shall be labeled in accordance with the requirements of § 1.106(c) of this chapter (regulations issued under section 502(f) of the act) and bear on its label and labeling the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

PART 146e—CERTIFICATION OF BACITRACIN AND BACITRACIN-CONTAINING DRUGS

19. By revising § 146e.403(c)(2) to read as follows:

§ 146e.403 Bacitracin tablets; zinc bacitracin tablets; bacitracin methylene disalicylate tablets; bacitracin suppositories; zinc bacitracin suppositories (if they are represented for vaginal use); bacitracin implantation pellets; zinc bacitracin implantation pellets (if they are represented for use by implanting under the skin of animals).

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

20. By revising § 146e.405(c)(2) to read as follows:

§ 146e.405 Bacitracin with vasoconstrictor; bacitracin with _____ (the blank being filled in with the established name of the vasoconstrictor).

* * * * *

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all the requirements prescribed by subparagraph (1) of this paragraph except that in lieu of the statement, "Caution: Federal law prohibits dispensing without prescription," each package shall include information containing directions and warnings adequate for the veterinary use of the drug by the laity and the statement, "Warning: Not for use in animals which are raised for food production."

* * * * *

21. By revising § 146e.416(c)(2) to read as follows:

§ 146e.416 Bacitracin methylene disalicylate.

(c) * * *

(2) On the circular or other labeling within or attached to the package:

(i) Adequate directions and warnings for the veterinary use of the drug by the laity.

(ii) If it is intended for use in animals raised for food production, labeling in accordance with the requirements of regulations in Parts 121 and 135c of this chapter.

* * * * *

22. In § 146e.417(c)(1) by redesignating subdivision (v) as (vi) and adding a new subdivision (v), as follows:

§ 146e.417 Powder bacitracin methylene disalicylate and streptomycin sulfate oral veterinary.

* * * * *

(c) * * *

(1) * * *

(v) The statement, "Warning: Not for use in animals which are raised for food production".

(vi) If it contains adsorbent ingredients, the name of each.

* * * * *

23. In § 146e.423 by deleting paragraph (c) and by revising paragraph (b) to read as follows:

§ 146e.423 Soluble bacitracin methylene disalicylate.

* * * * *

(b) *Packaging; labeling; requests for certification, samples.* Soluble bacitracin methylene disalicylate conforms to all requirements and procedures prescribed

for bacitracin methylene disalicylate by § 146e.416 (b), (c), and (d), except that the person who requests certification of a batch shall submit with his request (unless previously submitted) a sample consisting of five immediate containers, each containing approximately 5 grams, of the bacitracin methylene disalicylate used in making the batch.

(c) [Deleted]

24. In § 146e.425 by deleting paragraph (f) and by adding to paragraph (c) (1) a new subdivision, as follows:

§ 146e.425 Bacitracin powder.

* * * * *

(c) * * *

(1) * * *

(v) If it is intended for use in animals raised for food production, it shall be labeled in accordance with the requirements of regulations in Parts 121 and 135c of this chapter.

* * * * *

(f) [Deleted]

25. By revising § 146e.427(b) to read as follows:

§ 146e.427 Feed grade bacitracin powder oral veterinary (crude bacitracin powder oral veterinary, unrefined bacitracin powder oral veterinary); feed grade zinc bacitracin powder oral veterinary (crude zinc bacitracin powder oral veterinary, unrefined zinc bacitracin powder oral veterinary).

* * * * *

(b) *Packaging; labeling; requests for certification, samples.* Feed grade bacitracin powder oral veterinary and feed grade zinc bacitracin powder oral veterinary conform to all requirements and procedures prescribed for bacitracin powder by § 146e.425 (b), (c), and (d), except that an expiration date of 24 months or 36 months may be used if the manufacturer has submitted to the Commissioner results of tests and assays showing that, after having been stored for such period of time, such drug as prepared by him complies with the standards prescribed by paragraph (a) of this section.

26. By revising § 146e.431(b) to read as follows:

§ 146e.431 Feed grade manganese bacitracin powder oral veterinary.

* * * * *

(b) *Packaging; labeling; requests for certification, samples.* Feed grade manganese bacitracin powder oral veterinary conforms to all requirements and procedures prescribed for feed grade zinc bacitracin powder oral veterinary by § 146e.427(b), except:

(1) Its expiration date shall be 12 months.

(2) Its labeling is such that, when the drug is mixed with animal feed according to the directions contained therein, such medicated feed complies with the requirements of § 144.24 of this chapter and the requirements of regulations in Part 121 of this chapter.

Effective date. This order shall be effective 30 days after its publication in the FEDERAL REGISTER.

(Sec. 512 (i), (n), 82 Stat. 347, 350-51; 21 U.S.C. 360b (i), (n))

Dated: October 19, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-15904 Filed 11-3-71;8:45 am]

Chapter III—Environmental Protection Agency

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Mixture of 3,4,5-Trimethylphenyl Methylcarbamate and 2,3,5-Trimethylphenyl Methylcarbamate

A petition (PP 9F0843) was filed by Shell Chemical Co., Division of Shell Oil Co., Suite 1103, 1700 K Street NW., Washington, DC 20006, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 346a), proposing establishment of tolerances for negligible residues of an insecticide that is a mixture of 3,4,5-trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate isomers which are present in ratios varying between 4:1 and 3:1, respectively, in or on the raw agricultural commodities corn grain, fodder, and forage, including field corn, popcorn, and sweet corn at 0.2 part per million.

Subsequently, the petitioner amended the petition by withdrawing the proposed tolerance for sweet corn and changing the proposed tolerances for the remaining commodities from 0.2 to 0.1 part per million (negligible residue).

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purpose for which tolerances are being established, and the Fish and Wildlife Service of the Department of the Interior advised that it has no objection to these tolerances.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The proposed uses are not reasonably expected to result in residues of the pesticides in eggs, meat, milk, and poultry. The uses are classified in the category specified in § 420.6(a)(3).

2. The tolerances established by the order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), Part 420 is amended as follows:

1. Section 420.3(e)(5) is amended by alphabetically inserting in the list of cholinesterase-inhibiting pesticides a new item, as follows:

§ 420.3 Tolerances for related pesticide chemicals.

* * * * *

(e) * * *

(5) * * *

3,4,5-Trimethylphenyl methylcarbamate and its isomer 2,3,5-trimethylphenyl methylcarbamate.

2. The following new section is added to Subpart C:

§ 420.305 3,4,5-Trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate; tolerances for residues.

Tolerances are established for negligible residues of an insecticide that is a mixture consisting of 3,4,5-trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate isomers, which are present in ratios varying between 4:1 and 3:1, respectively, in or on the raw agricultural commodities corn grain (including field corn and popcorn) and corn fodder and forage at 0.1 part per million (such tolerance to cover the sum of the residues of both components).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11-4-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: October 28, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16050 Filed 11-3-71;8:46 am]

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Exemptions From Tolerances for Butoxytriethyleneglycol Phosphate

A petition (PP 1F1079) was filed by Witco Chemical Corp., 400 North Michigan Avenue, Chicago, IL 60611, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) proposing establishment of an exemption from the requirement of a tolerance for residues of butoxytriethyleneglycol phosphate when used as an inert ingredient of arsenical herbicide formulations.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that butoxytriethyleneglycol phosphate is useful for the purpose for which an exemption is being established and that the exemption established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), § 420.1001 is amended by alphabetically inserting a new item in the table in paragraph (d), as follows:

§ 420.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Butoxytriethyleneglycol phosphate	.....	Surfactant for arsenical herbicide formulations only.
* * *	* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (11-4-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a (d)(2))

Dated: October 27, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16049 Filed 11-3-71;8:46 am]

Title 22—FOREIGN RELATIONS

Chapter II—Agency for International Development, Department of State

[A.I.D. Reg. 1]

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.

U.S.-Flag Shipping and Bills of Lading

Part 201 of chapter II, title 22 (A.I.D. Reg. 1) is amended as follows:

1. In § 201.15, paragraph (a) is revised to read as follows:

§ 201.15 U.S.-flag vessel shipping requirement.

(a) *General requirements.* At least 50 percent of the gross tonnage of all commodities financed with A.I.D. dollar funds and transported to the cooperating country on ocean vessels shall be transported on privately owned U.S.-flag commercial vessels. The foregoing requirement shall apply separately for shipments on dry bulk carriers, dry cargo liners, and tankers from each of the following geographical areas: United States, Europe, and Africa, Near East and South Asia, Latin America and Canada, and Far East. Additionally, at least 50 percent of the gross freight revenue generated by all shipments financed with A.I.D. dollar funds and transported to the cooperating country on dry cargo liners shall be paid to or for the benefit of privately owned U.S.-flag commercial vessels.

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2. In § 201.31, paragraph (f) is revised to read as follows:

§ 201.31 Suppliers of commodities.

* * * * *

(f) *Distribution of shipping documents.* In addition to customary commercial document distribution the supplier shall, at the time of loading the commodities or as soon as practicable thereafter, airmail one set of the following documents to the Controller, USAID, c/o American Embassy in the capital city of the cooperating country to which shipment is being made, or to such other address as is designated to him: A nonnegotiable copy of the ocean or charter party bill of lading or other shipping document, supplier's invoice, and packing list. The supplier shall indicate on each such document the number of the applicable implementing document, if known to the supplier. Prior to presenting the documents specified in § 201.52 for payment the supplier shall mail a copy of the bill of lading described in § 201.52(a)(4)(i) to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235.

* * * * *

3. Section 201.52 is amended by adding a new subdivision (a)(2)(iii) to read as follows:

§ 201.52 Required documents.

(a) * * *

(2) * * *

(iii) The following certification manually signed by the supplier must appear on or be attached to each invoice:

A copy of the bill of lading, required to be presented for payment under and containing all the information specified in § 201.52 of A.I.D. Regulation 1 (22 CFR Part 201), has been mailed to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235.

* * * * *

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER (11-4-71).

Dated: October 27, 1971.

JOHN A. HANNAH,
Administrator.

[FR Doc.71-16136 Filed 11-3-71;8:53 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 208—FLOOD CONTROL REGULATIONS

Clark Canyon Dam and Reservoir, Beaverhead River, Beaverhead County, Mont.

Pursuant to the applicable provisions of sections 7 and 9 of the Act of Congress approved December 22, 1944 (58 Stat. 890, 891; 33 U.S.C. 709), the following regulations are hereby prescribed to govern the use of storage capacity for flood control purposes in Clark Canyon Reservoir by the operation of Clark Canyon Dam on the Beaverhead River, Beaverhead County, Mont.

§ 208.43 Clark Canyon Dam and Reservoir, Beaverhead River, Beaverhead County, Mont.

The Bureau of Reclamation, Department of the Interior, represented by the Regional Director in charge of the locality, hereinafter referred to as the Regional Director, shall regulate Clark Canyon Dam and Reservoir in the interest of flood control in accordance with instructions furnished by the Department of the Army, represented by the

District Engineer in charge of the locality, hereinafter referred to as the District Engineer, as follows:

(a) Releases will be made as necessary to achieve the following control:

(1) *Local flood control.* To restrict project releases to the amount which, in conjunction with incremental inflows below the dam, will not result in damaging discharges on the Beaverhead River.

(2) *Replacement flood control.* In years when the flood control and multiple-use storage space within the downstream Fort Peck Reservoir may be fully utilized, Clark Canyon Reservoir will assist in flood control along the Missouri River by withholding floodwater from Fort Peck Reservoir.

(b) To achieve the control specified in paragraph (a) of this section, storage space in Clark Canyon Reservoir shall be kept available in accordance with the Flood Control Storage Reservation Diagram currently in force. The Flood Control Storage Reservation Diagram in force as of the promulgation of this section is that dated October 14, 1971, and is on file in the Office of the Chief of Engineers, Department of the Army, Washington, D.C., and in the Office of the Commissioner of Reclamation, Washington, D.C. Revisions of the diagram may be developed from time to time as necessary by the Corps of Engineers and the Bureau of Reclamation. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and the Commissioner of Reclamation and from that date until replaced shall be the Flood Control Storage Reservation Diagram for purposes of this section. Copies of the Flood Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the Office of the District Engineer, Corps of Engineers, and the Regional Director, Bureau of Reclamation, in charge of the locality.

(c) Any water temporarily stored in the space between elevation 5,560.4 (crest of spillway) and the elevation corresponding to the flood control allocation as indicated by the Flood Control Diagram, shall be released as rapidly as downstream conditions permit. The District Engineer will determine releases under these conditions.

(d) The discharge characteristics of the river regulation outlet works (having a capacity of 2,160 cubic feet per second with reservoir level at elevation 5,535.7) shall be maintained in accordance with the as-constructed drawings (Bureau of Reclamation Drawing No. 699-D-268 dated February 6, 1962).

(e) Proposed schedules of conservation releases and storage changes, if available, and current operating data shall be provided to the District Engineer by the Regional Director. Operating data shall be tabulated daily and furnished periodically as required and shall include such items as: Reservoir elevation, reservoir storage, inflow, discharge, and other pertinent available hydrologic data.

(f) Oral instructions issued by the District Engineer to the Regional Director shall be confirmed in writing under the date of the day issued.

(g) Nothing in this section shall be construed to require that releases shall be made at rates or in a manner inconsistent with requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the spillway design flood.

All elevations stated in this section are at the Clark Canyon Dam and are referred to a datum giving 5,560.4 as the elevation of the spillway crest.

[Regs., Oct. 14, 1971. DAEN-CWE-Y] Sections 7 and 9, 58 Stat. 890, 891; 33 U.S.C. 709)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71-16045 Filed 11-3-71;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Cost Sharing

The following new Subpart 9-4.56—Cost Sharing sets forth the Atomic Energy Commission's policy on cost sharing under prime contracts for basic and applied research and implements Office of Management and Budget Circular No. A-100.

1. The following new subpart is added:

Subpart 9-4.56—Cost Sharing

Sec.
9-4.5600 Scope of subpart.
9-4.5601 Policy.
9-4.5602 Application.
9-4.5603 Amount of cost sharing.
9-4.5604 Records.

AUTHORITY: The provisions of this Subpart 9-4.56 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9-4.56—Cost Sharing

§ 9-4.5600 Scope of subpart.

This subpart sets forth the policy of the Atomic Energy Commission on cost sharing by organizations performing basic and applied research under AEC prime contracts and agreements.

§ 9-4.5601 Policy.

It is the policy of the AEC to encourage, when appropriate, participation by the performing organization in the cost of research effort. While not required of the Commission by statute, cost sharing is encouraged to obtain a larger national effort in the nuclear energy field and to recognize that the research is also normally of benefit to the performing organization.

§ 9-4.5602 Application.

(a) This policy applies to research contracts and agreements with educational institutions, other not-for-profit or nonprofit organizations and commercial or industrial organizations, or other organizations except other Federal agencies. This policy ordinarily will not be applied in the following cases:

(1) Contracts for the operation of Government-owned or leased, contractor-operated facilities;

(2) Continuing cost reimbursement contracts for mission-oriented, large-scale research programs performed in research centers using equipment or facilities which are usually either partially or wholly Government owned.

(b) This policy need not be applied where deemed inappropriate by the cognizant Headquarters Division Director or Field Office Manager (whoever selects the contractor) or their designees for any of the following reasons:

(1) It is a development effort the principal purpose of which is the production of, or the design, testing or improvement of, products, materials, devices, systems, or methods such as projects connected with the LMFBR program, the Naval Reactors program or the ROVER program;

(2) The research effort has only minor relevance to the performing organization's non-Federal activities;

(3) The performing organization has little or no non-Federal sources of funds from which to make a cost contribution;

(4) The performing organization is predominantly engaged in research and development and has little or no production or other service activities to which knowledge obtained from the research effort may be gainfully applied;

(5) The research objective or scope of the effort is specified by the Commission rather than proposed by the performing organization (e.g., a contract resulting from a request for proposal);

(6) It is concluded that payment of the full cost of the research effort is necessary in order to obtain the services of a particular organization.

§ 9-4.5603 Amount of cost sharing.

The extent and type of cost sharing will be established by mutual agreement of the parties with consideration given to the research effort and the organization performing it. When an amount is determined for a contract or agreement, the organization's participation over the total term of the project may be considered so that a relatively high contribution in 1 year may be offset by a relatively low contribution in another. Cost participation may be accomplished by a contribution to any of the cost elements under a research contract or agreement, either direct or indirect costs, provided that such costs would otherwise be allowable and are not charged to the Federal Government under any other contract, agreement, or grant.

(a) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be more than on a token basis; however,

cost sharing of less than 5 percent of total project cost may be appropriate in view of these organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. Educational institutions will normally be expected to provide a higher degree of cost sharing when, for example:

(1) The cost of the research consists primarily of the academic year salary of faculty members;

(2) Equipment acquired by the institution for the project will be of significant value to the institution in its educational activities; or

(3) The institution has demonstrated a substantial interest in a particular area of research as evidenced by the establishment of a higher degree of cost sharing under prior contracts or agreements.

(b) Commercial or industrial organizations might contribute amounts ranging up to 50 percent or more of the total project cost. The amount of their cost sharing participation should depend principally on whether, and to what degree, the results of the research are likely to enhance their capability, expertise, or competitive posture. However, these potential benefits would be lessened if the performing organization lacks production or other service activities to which the research results might be commercially applied, as is likely to be the case with a predominantly research and development organization.

(c) The level at which a performing organization cost shares may depend to some degree upon the extent to which the organization will receive or be expected to receive rights in and to any inventions, patents, or technical information that may result from the research effort and the degree to which the organization is likely to benefit thereby.

(d) A relatively low degree of cost sharing may be appropriate if a particular area of research requires special stimulus in the national interest.

(e) A fee, profit, or an amount otherwise accepted as allowable for independent research, if any (see AECPR 9-15.5010-12 for policy on independent research and development), will usually not be paid if the performing organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced if the performing organization is foregoing its normal fee or profit or an otherwise acceptable amount for independent research. Alternatively, the contribution may take the form of reduced fee or profit or a reduced amount otherwise accepted as allowable for independent research, particularly if the research contracted for is expected to be of relatively minor value to the performing organization.

§ 9-4.5604 Records.

Recipients of contracts or agreements which provide for cost sharing shall be required to maintain records adequate to reflect the nature and extent of their cost contribution as well as those costs charged to the AEC. Such records shall be subject to audit by the Commission or its duly authorized representative. This requirement does not apply to contributions of effort made by principal investigators as provided in AECPR 9-4.5107-2(d).

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER (11-4-71).

Dated at Germantown, Md., this 28th day of October 1971.

For the U.S. Atomic Energy Commission.

ROBERT A. KOHLER,
Acting Director,
Division of Contracts.

[FR Doc. 71-16046 Filed 11-3-71;8:45 am]

Chapter 15—Environmental Protection Agency

PART 15-3—PROCUREMENT BY NEGOTIATIONS

Subpart 15-3.8—Price Negotiation

POLICIES AND TECHNIQUES REGARDING PROFIT OR FEE

On pages 14216 through 14219 of the FEDERAL REGISTER of July 31, 1971, there was published a notice of proposed rule making to issue regulations concerning the negotiation of profit or fee. Interested persons were given 30 days in which to submit written data, views or arguments regarding the proposed regulations.

All data received have been reviewed and comments considered by the Agency and it has been determined that it would be impracticable to incorporate any of the suggested changes at this time. Therefore, the proposed regulations are hereby adopted without change and are set forth below.

Effective date. These regulations shall be effective as of October 15, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

OCTOBER 29, 1971.

§ 15-3.808-50 Profit or fee guidelines.

(a) (1) *General.* It is the policy of the Agency to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the EPA, and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relative factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be done, the contractor's input to the total performance, and the risks assumed by the contractor. The profit evaluation criteria which follow were developed for use by the EPA in order (i) to provide a standard method of evaluation, (ii) to insure consideration of all relative factors, (iii) to provide a basis for documentation and explanation of the profit negotiation objective, (iv) to allow contractors to earn profits commensurate with the assumption of risk, (v) to reward contractors who provide their own facilities, financing and personnel, and (vi) to reward contractors who undertake more difficult work requiring higher risks. Except as noted below, use of these guidelines is mandatory for establishing prenegotiation profit/fee objectives for all negotiated contracts where cost analysis is required (see FPR 1-3.807-2).

(2) *Exceptions.* (i) Under the following circumstances, other methods for establishing profit objectives can be used. Generally, it is expected that such methods will (*a*) provide the contracting officer with a technique that will insure consideration of the relative value of the appropriate profit factors described under "Profit Factors", and (*b*) serve as a basis for documentation of the objective. The circumstances are:

(*1*) Architect-engineering contracts;

(*2*) Personal or professional service contracts;

(*3*) Management contracts, e.g., for maintenance or operation of Government facilities;

(*4*) Termination settlements;

(*5*) Engineering services, labor-hour, time and material contracts which provide for payment on a man-hour, man-day or man-month basis, and where the contribution by the contractor constitutes the furnishing of personnel rather than the output of an integrated research, engineering, or manufacturing operation; and

(*6*) Cost-reimbursement construction contracts; and

(*7*) Cost-plus-award-fee contracts.

(ii) Under unusual circumstances, the Head of the Procuring Activity may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing and authorized only in situations where the guidelines method is determined to be unsuitable.

(3) *Limitations.* In the event that any of the methods used would result in establishing a fee objective in violation of limitations established by statute or the FPR, the maximum fee objective shall be the percentage allowed pursuant to such limitations. No administrative ceilings on profits shall be established at any level below the Head of the Procuring Activity.

(b) (1) Profit factors: The factors set forth below and the weighted ranges listed after each factor shall be used in all instances where the profit is to be specifically negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight range (percent)
Direct Materials:	
Purchases	1 to 4.
Subcontracts	1 to 5.
Equipment	1 to 2.
Engineering labor	8 to 15.
Engineering overhead	6 to 9.
Manufacturing labor	5 to 9.
Manufacturing overhead	4 to 7.
Consultants	2 to 5.
Other direct costs	1 to 3.
General and administrative expenses	5 to 8.
Contractor's assumption of contract cost risk	0 to 6.

	Weight range (percent)
Record of contractor's performance	−2 to +2.
Cost efficiency.	
Management.	
Extent of investment.	
Reliability of cost estimates.	
Inventive and developmental contributions.	
Timely performance.	
Small business participation.	
Labor surplus area participation.	
Extent of Government assistance.	
Effect of competition.	

(2) Using the above method, the contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. Such costs are multiplied by the specific percentages, to arrive at specific dollar profits.

(3) After the contracting officer has computed a total dollar profit for the Contractor's Input to Total Performance, he shall divide this amount by the total recognized costs to determine the composite profit percentage for this factor. To this composite percentage, he shall then add the specific percentages, assigned for cost risk, and performance, to arrive at a total profit percentage. He shall then multiply the total recognized contract costs by this total profit percentage to determine the profit objective. It should be noted that the specific percentages assigned for cost risk, and performance are applied to total recognized costs in establishing the profit objective. EPA Form 1900-2 is to be used to facilitate the calculation of this profit objective.

(4) The weight factors shown are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Adjustments as explained below are to be made to reflect differences between profit and nonprofit organizations.

(i) For purposes of this subparagraph, nonprofit and not-for-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, the following adjustments are required:

(*a*) A special factor of −3 percent shall be assigned in all cases.

(*b*) The weighted ranges from "Record of Contractor's Performance" shall be halved, i.e., −1 percent to +1 percent rather than −2 percent to +2 percent.

(c) Assignment of values to specific factors:

(1) *General.* In making his judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth herein.

(2) *Contractor's input to total performance.* This factor is a measure of how much the contractor himself is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resoures are necessary and what the contractor himself must do to accomplish a conversion of ideas and materials into the final item called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct materials (purchased parts, subcontracted items, and other material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities, purchases of processed material including all types of components of standard or near-standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling and other products special to the end-item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program might be substantial. This might be applicable in the management of subcontracting programs involving many sources, involving new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation. If intracompany transfers are accepted at price, in accordance with § 1-15.205-22(e) of this title, they should be excluded from the fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor and overhead. Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor in relation to the total cost of the material.

(ii) *Equipment.* It is the policy of the Agency to contract with individuals or firms who have special capabilities relative to the need of the EPA. These capabilities include personnel with particular skills, or talents, and facilities (plant and equipment) necessary to complete the contract objectives. For the purpose of profit/fee analysis, equipment includes purchased items which are not to be an integral part of the final product. It would generally consist of production or test equipment. Where the EPA has to provide equipment to the contractor either as Government furnished equipment or contractor acquired equipment, appropriate profit/fee adjustments are necessary. Generally a low weight range shall be assigned to the cost of such equipment (1-2 percent).

(iii) *Engineering labor and manufacturing labor.* Analysis of the engineering labor and manufacturing labor items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, manufacturing skills and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination should be evaluated. Similarly, the variety of manufacturing labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For the purpose of profit/fee computation, manufacturing labor includes all nonprofessional labor, e.g. secretaries, technicians and carpenters, etc.

(iv) *Engineering overhead, manufacturing overhead, and general and administrative expenses.* (*a*) Where practicable, analysis of these overhead items of cost should include the evaluation of the make up of the expenses and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract.

The allocable labor elements should be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and hence given lesser profit consideration given the pools as a whole.

(b) It is not necessary that the contractor's accounting system break down his overhead expenses within the classification of engineering overhead, manufacturing overhead, and general and administrative expenses. The contractor whose accounting system only reflects one overhead rate on all direct labor need not change his system to correspond with all the above classifications. Where practicable, the contracting officer in his evaluation of such a contractor's overhead rate should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead and general and administrative expenses and follow the appropriate evaluation technique. When it is not practicable to evaluate the elements of the burden pool, the following rates should usually apply:

	Percent
Engineering overhead	7.5
Manufacturing overhead	5.5
Composite overhead	6.5
G & A	6.5

(c) It is not necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. Once an analysis of the profit weight to be assigned the overhead pool has been made, the weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances.

(v) *Consultants.* Consultant costs, whether related to an individual consultant or consulting firm should be analyzed from the standpoint of what talents and skills the consultants have and how they will be used on the contract. The analysis should consider if the contractor normally should be expected to have people with comparable expertise employed as full-time staff or if the contract requires skills not normally available on an employer-employee relationship. Where the contractor is using consultants to perform services which could normally be expected to be done in-house, the rating factor should be generally below 2–3 percent. Where noted experts are retained for consultation on the contract, the rating will generally be higher.

(vi) *Other direct costs.* Items of costs, such as travel, subsistence, printing and computers should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct materials.

(3) *Contractor's assumption of contract cost risk.* (i) It is the policy of the Administration to shift the risk of contract costs to the fullest extent practicable to contractors and to compensate them for the assumption of this risk. Evaluation of this risk requires a determination of (a) the degree of cost responsibility the contractor assumes, (b) the reliability of the cost estimates in relation to the task assumed, and (c) the chance of the contractor's success or failure. This factor is specially limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields, are not within the scope of this factor.

(ii) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use his best efforts to perform a task, and a firm-fixed-price contract for a complex item. Such cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas such firm-fixed-price contract would reflect a complete assumption of cost responsibility. Therefore, in the first step of determining what value is to be given for the contractor's assumption of contract cost risk, a zero rating shall be given to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating shall be given to a closely priced firm-fixed-price contract for a new, complex item.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract:	*Percentage ranges*
Cost-plus-fixed-fee	0 to 1.
Cost-plus-incentive-fee including cost incentives only	1 to 2.
Cost-plus-incentive-fee including cost, performance, and delivery incentives	2½ to 3.
Fixed-price-incentive including cost incentives only	2 to 4.
Fixed-price-incentive including cost, performance, and delivery incentives	3 to 5.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(a) These ranges may not be appropriate for all procurement situations. For instance, a fixed-price-incentive contract which is closely priced with a low ceiling price and a high incentive share may be tantamount to a firm-fixed-price contract. In this situation, the contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contractors.

(b) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of having partial performance under a letter contract. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than the normal situation. To be equitable the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentage of work completed, prior to definitation.

(4) *Record of contract performance.* (i) The purpose of this factor is to motivate contractors to improve their performance by rewarding them for excellent past performance and penalizing them for poor performance. Effective use of this factor requires that (a) reports on the various aspects of past performance be obtained and evaluated; and (b) this information be used in such a way as to motivate contractors to improve their performance.

(ii) The evaluation of a particular contractor's past performance and the importance placed upon the various subfactors listed below should be done in such a way as to motivate the contractor to improve his performance. For instance, it might be pointless, in evaluating the performance of an autonomous division of a multidivisional contractor, to place emphasis on the performance of another autonomous division. Under such circumstances, management of the division being evaluated might have no means of controlling the performance of the other division; therefore, emphasis on this performance by assigning a plus or minus rating to this factor might have a negative affect upon motivation to improve.

(iii) The weight to be assigned to this factor is arrived at on a judgment basis rather than an arithmetical averaging of weights assigned to all factors, depending upon the particular procurement situation, and the relative importance of the various factors. For example, an evaluation of a particular contractor may indicate that his performance was

satisfactory in most areas, except that he showed a preference for doing all work in-house and a disinclination to support Government small business objectives. In such a case the contracting officer may feel that the importance of these factors might justify the assignment of a lower overall rating for the record of past performance.

(iv) As stated above, the purpose of this factor is to reward a contractor for excellent past performance and penalize him for poor performance. Therefore, performance which is rated as merely satisfactory should generally be assigned to weight of zero. However, a contractor who has consistently met contractual requirements may be awarded a plus.

(v) The following factors are to be considered in evaluating a contractor's performance record:

(*a*) Cost efficiency: Low cost performance reflecting economic use of facilities and manpower, sound purchasing methods and subcontracting procedures, and effective inventory control are criteria for consideration. Improvement in efficiency through investment in plant modernization, past efficiencies, or lack thereof, effectiveness of the contractor's make-or-buy program, purchasing and subcontracting system and inventory control should be evaluated.

(*b*) Management: Stability and competence of management personnel, their willingness and ability to adjust company resources to meet peculiarly difficult and changing control requirements are criteria for consideration. The degree of cooperation by the contractor, both business and technical, with the objectives of the Government should be considered.

(*c*) 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 profits.

(*d*) Reliability of cost estimates: Accuracy and reliability of previous cost estimates should be considered. Where substantial overruns have occurred, the contracting officer should attempt to determine the reasons.

(*e*) Inventive and developmental contributions: Extent and nature of contractor-initiated and financed research, development, design work, product engineering, quality control, and manufacturing processes and techniques in the areas of concern to the EPA should be analyzed.

(*f*) Timely performance: The contractor's performance record, considering excusable delays and the contractor's efforts to overcome delays, should be analyzed.

(*g*) Small business participation: The contractor's policies and procedures which energetically support Government small business programs pursuant to § 1-1.710-1 of this title should be given favorable consideration. Any unusual effort which the contractor displays in subcontracting with small concerns, particularly for development type work likely to result in later production opportunities, and overall effectiveness of the contractor in subcontracting with and furnishing assistance to small concerns should be considered. Conversely, failure or willingness on the part of the contractor to support Government small business policies should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(*h*) Labor surplus area participation: A similar review and evaluation (as required in (*g*) of this subdivision) should be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program pursuant to § 1-1.805-1 of this title. Particular favorable consideration should be given to a contractor who (*1*) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (2) promotes maximum subcontractor utilization of certified-eligible concerns, as defined in § 1-1.801-1 of this title.

(*i*) Extent of Government assistance: The Government 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.

(*j*) Effect of competition: When competition is 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. When effective competition is lacking, and in all cases where cost analysis is performed in accordance with § 1-3.807-2(c) of this title the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price.

[FR Doc.71-16038 Filed 11-3-71;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5142]

[New Mexico 13912]

NEW MEXICO

Final Revocation of Stock Driveway Withdrawal (Magdalena Stock Driveway)

By virtue of the authority contained in section 10 of the Act of December 29, 1916, 39 Stat. 865, as amended, 43 U.S.C. 300 (1964), it is ordered as follows.

1. The departmental order of February 28, 1918, which established Stock Driveway No. 9, New Mexico No. 3, as heretofore modified, is hereby revoked so far as it affects the remaining lands embraced therein described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 2 S., R. 4 W.,
Sec. 21, lot 5, SW¼NE¼, NE¼SW¼, W½SW¼ and NW¼SE¼;
Sec. 29, NW¼NE¼ and N½NW¼;
Sec. 30, lots 1, 2, 3, NE¼, E½NW¼ and NE¼SW¼.

T. 2 S., R. 5 W.,
Sec. 25, E½NE¼ and S½;
Sec. 26, S½;
Sec. 27, S½;
Sec. 33, S½SE¼;
Sec. 34;
Sec. 35, N½NE¼ and NW¼;
Sec. 36, N½NW¼.

T. 3 S., R. 5 W.,
Sec. 3, lots 2, 3, 4, SW¼NE¼, S½NW¼ and W½SW¼;
Secs. 4 and 5;
Sec. 6, lots 8, 9 and 12 to 23, inclusive;
Sec. 7, lots 6, 7, 8 and 9.

T. 3 S., R. 6 W.,
Sec. 1, S½NE¼ and S½;
Sec. 7, lots 1, 2, NE¼ and E½NW¼;
Sec. 8, N½;
Sec. 9, N½;
Sec. 10, N½;
Sec. 11, N½;
Sec. 12, N½.

T. 3 S., R. 7 W.,
Sec. 7, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼ and N½SE¼;
Sec. 8, N½ and N½S½;
Sec. 9, E½, NW¼, N½SW¼ and SE¼SW¼;
Sec. 10, N½, SW¼ and NW¼SE¼;
Sec. 11, N½;
Sec. 12, W½NE¼, SE¼NE¼ and NW¼;
Sec. 15, NW¼NW¼;
Sec. 16, NE¼NE¼.

T. 3 S., R. 8 W.,
Sec. 7, lots 2, 3, S½NE¼, SE¼NW¼, NE¼SW¼ and N½SE¼;
Sec. 8, S½N½ and N½S½;
Sec. 9, S½N½ and N½S½;
Sec. 10, S½N½ and N½S½;
Sec. 11, S½N½ and N½S½;
Sec. 12, S½N½ and N½S½.

T. 3 S., R. 9 W.,
Sec. 11, E½E½;
Sec. 12, S½N½ and N½S½;
Sec. 14, E½E½;
Sec. 23, E½E½;
Sec. 26, NE¼ and S½NW¼;
Sec. 27, S½N½;
Sec. 28, S½N½ and NE¼SE¼;
Sec. 29, S½N½;
Sec. 30, lot 2, S½NE¼ and SE¼NW¼.

T. 3 S., R. 10 W.,
Sec. 25, S½N½ and NW¼SW¼;
Sec. 26, E½SE¼ and SW¼SE¼;
Sec. 34, E½SE¼ and SW¼SE¼;
Sec. 35, NW¼NE¼, E½NW¼, SW¼NW¼ and NW¼SW¼.

T. 4 S., R. 10 W.,
Sec. 3, lots 2, 3, S½NW¼ and NW¼SW¼;
Sec. 4, N½S½;
Sec. 5, N½S½;
Sec. 6, lots 6, 7, NE¼SW¼, N½SE¼ and SE¼SE¼.

T. 4 S., R. 11 W.,
Sec. 1, SE¼SE¼;
Sec. 11, SE¼SE¼;
Sec. 12, N½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼ and SW¼SW¼;
Sec. 14, N½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼ and SW¼SW¼;
Sec. 19, lots 9, 10, 11, 12 and N½SE¼;
Sec. 20, N½S½;
Sec. 21, N½S½;
Sec. 22, N½NE¼, SW¼NE¼, SE¼NW¼ and N½SW¼.

The areas described aggregate 16,512.28 acres in Socorro and Catron Counties.

The land is located in west-central New Mexico. It extends in an easterly-westerly direction through the central part of the San Augustine plains. It

varies from one quarter to 2 miles in width and is about 50 miles long. The topography varies from nearly level to moderately rolling: Soils vary from heavy loam to sandy loam in texture and from shallow to deep in depth. Vegetation consists of blue grama and sand dropseed grasses, chamise browse, rabbitbrush and a scattered stand of piñon-juniper trees.

2. At 10 a.m. on November 25, 1971, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 25, 1971, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been and continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

Inquiries concerning the land should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, Post Office Box 1449, Santa Fe, NM 87501.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 20, 1971.

[FR Doc.71-16070 Filed 11-3-71;8:48 am]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER N—DANGEROUS CARGOES

[CGFR 71-128]

PART 2—VESSEL INSPECTIONS

PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES AND COMBUSTIBLE LIQUIDS ON BOARD CARGO VESSELS

Dangerous Cargo Containers

On pages 12909 and 12910 of the FEDERAL REGISTER (36 F.R. 5246) which appeared July 9, 1971, a notice of proposed rule making was published, which proposed an amendment to the Dangerous Cargo Regulations. A public hearing was held on August 24, 1971 and interested persons were given 53 days in which to submit written comments regarding the proposed regulations.

No objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

(RS 472 as amended, sec. 1, 19 Stat. 252; sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 170, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment shall become effective on December 31, 1971.

Dated: October 29, 1971.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

1. By amending § 2.20-65 by deleting the word "or" in paragraph (b)(4), by adding "; or" after the words "of this paragraph" in paragraph (b)(5), and by adding paragraphs (b)(6) and (e) to read as follows:

§ 2.20-65 Immediate notice of certain hazardous incidents.

* * * * *

(b) * * *

(6) Fire, breakage, spillage or suspected radioactive contamination occurs involving shipment of radioactive materials.

* * * * *

(e) *Notification to the shipper.* The owner, master, agent, or person in charge of any vessel, domestic or foreign engaged in transporting radioactive materials (including loading, unloading or temporary storage) shall notify the shipper by telephone, radiotelephone, radio message, or other expeditious means, at the earliest practicable moment, of any incident that occurs on board in which there has been fire, breakage, spillage, or suspected radioactive contamination involving the radioactive materials shipment.

2. By amending § 146.19-50(a) by adding the words "as prescribed by § 2.20-65 of this chapter," after the words ", or his authorized representative," in the fourth sentence.

[FR Doc.71-16132 Filed 11-3-71;8:53 am]

[CGFR 71-129]

PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

Reclassification of Fusees

This amendment reclassifies Railway Fusees and Highway Fusees from class C explosives to inflammable solids. This will require fusees to bear a yellow label as an inflammable solid.

At page 21201 of this issue of the FEDERAL REGISTER, the Hazardous Materials Regulations Board of the Department of Transportation is amending 49 CFR Part 173. Their amendment provides for the reclassification of railway and highway fusees from class C explosives to inflammable solids.

The Board's amendment to the hazardous material regulations of the Department of Transportation in Title 49 applies to shippers by water, air, and land and to carriers by air and land. This amendment to Title 46 applies to carriers by water.

Interested persons were afforded an opportunity to participate in the making of this rule. This amendment was published as a notice of proposed rule making (CGFR 71-12) on March 20, 1971 (36 F.R. 5400) and a hearing was held on this amendment on June 8, 1971 at Washington, D.C.

Accordingly, Part 146 of Title 46 Code of Federal Regulations is amended as follows:

1. In § 146.04-5 *Test of explosives and other dangerous articles and combustible liquids.*

a. By deleting the entries for "Railway Fusees" and "Highway Fusees".

b. By adding in proper alphabetical sequence the following entry:

Article	Classed as—	Label required
* * *	* * *	* * *
Fusees	Inf. S	Yellow.
* * *	* * *	* * *

2. In § 146.20-300 "Table C—Classification: Class C relatively safe explosives" by deleting the entries for the articles "Highway Fusees" and "Railway Fusees".

3. In § 146.22-100 "Table D—Classification: Inflammable Solids" by adding in proper alphabetical sequence the following entry:

Descriptive name of article	Characteristic properties, cautions, markings required	Label required	Required conditions for transportation			
			Cargo vessel	Passenger vessel	Ferry vessel, passenger, or vehicle	R.R. car ferry, passenger or vehicle
Fusees	*A fusee is a device to burn at a controlled rate and to produce visible effects for signaling purposes. It consists of a pasteboard or fiber tube containing a colored flare mixture and with or without a means of support. The composition of the fusee must be such that spontaneous ignition does not occur when the moistened composition is exposed to a temperature of BVV° F. for 72 consecutive hours. Fusees must have individual tip, head, or similar ignition point or surface entirely covered and securely protected against accidental contact or friction.* Fusees without spikes when offered for shipment may be packed in packages prescribed herein, omitting the protection required for these devices when equipped with spikes. May be packed with nonexplosive or noninflammable articles provided the outside packages are marked as prescribed below. Each outside package must be plainly marked in letters not less than seven-sixteenths inch in height "Fusees" and with the additional words "Handle Carefully—Keep Fire Away."	Yellow	Stowage: "On deck under cover." "Tween decks readily accessible." "Under deck away from heat." Outside containers: Wooden boxes (DOT-16A, 15B, 16A, 19A) not over 200 lb. gr. wt. Wooden boxes (DOT-15C) WIMC, not over 200 lb. gr. wt. Wooden boxes (DOT-19B) not over 150 lb. gr. wt. Fiberboard boxes (DOT-12B) WIC, not over 65 lb. gr. wt. Mailing tubes (DOT-29) not over 5 lb. gr. wt.	Stowage: "On deck under cover." "Tween decks readily accessible." Outside containers: Wooden boxes (DOT-15A, 15B, 16A, 19A) not over 200 lb. gr. wt. Wooden boxes (DOT-15C) WIMC, not over 200 lb. gr. wt. Wooden boxes (DOT-19B) not over 150 lb. gr. wt. Fiberboard boxes (DOT-12B) WIC, not over 65 lb. gr. wt. Mailing tubes (DOT-29) not over over 5 lb. gr. wt.	Ferry stowage (AA) Outside containers: Wooden boxes (DOT-15A, 15B, 16A, 19A) not over 200 lb. gr. wt. Wooden boxes (DOT-15C) WIMC not over 200 lb. gr. wt. Wooden boxes (DOT-19B) not over 150 lb. gr. wt. Fiberboard boxes (DOT-12B) WIC, not over 65 lb. gr. wt. Mailing tubes (DOT-29) not over 5 lb. gr. wt.	Ferry stowage (BB) Outside containers: Wooden boxes (DOT-15A, 15B, 16A, 19A) not over 200 lb. gr. wt. Wooden boxes (DOT-15C) WIMC, not over 200 lb. gr. wt. Wooden boxes (DOT-19B) not over 150 lb. gr. wt. Fiberboard boxes (DOT-12B) WIC, not over 65 lb. gr. wt. Mailing tubes (DOT-29) not over 5 lb. gr. wt.

(R.S. 4472, as amended; sec. 1, 19 Stat. 252, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 170, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment shall become effective on December 31, 1971.

Dated: October 29, 1971.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.71-16133 Filed 11-3-71;8:53 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19161; FCC 71-1115]

PART 73—RADIO BROADCAST SERVICES

First Report and Order

In the matter of amendment of § 73.202(b) of the Commission's rules, the FM Table of Assignments. (West Allis, Berlin, Hartford, Neenah-Menasha, Shawano, Watertown, and Waupun, Wis., and Escanaba, Mich.; Coal City, Dwight, or Marseilles, Ill.; St. Charles and St. Louis, Mo.; Muncie, Ind. and Celina, Fostoria, and Lima, Ohio; Anamosa and Iowa City, Iowa; Terrell and Corsicana, Tex.; Sullivan, Bedford, and Paoli, Ind.; Orangeburg, S.C.; Danville, Ind.; Decatur or Paris, Ill.; Manning and Kingstree, S.C.) RM-1476, RM-1489, RM-1523, RM-1524, RM-1528, RM-1540, RM-1552, RM-1554, RM-1559, RM-1561, RM-1563, RM-1566, RM-1571, RM-1626, and RM-1660.

1. The Commission has under consideration the notice of proposed rule making, issued March 1, 1971, concerning the amendment to § 73.202(b) of the Commission's rules, the FM Table of Assignments. The notice gave consideration to the requests for assignment of FM channels to 15 communities and raised questions as to a number of the proposals. Except where indicated, all population figures herein are from the 1970 U.S. Census.

2. This first report and order deals with eight proposals which did not draw substantial oppositions or involve conflicting proposals. The remainder of the proposals will be considered in another document. Briefly, the proposals to assign or substitute channels in the following communities are adopted: St. Charles and St. Louis, Mo.; Terrell, Tex.; Sullivan, Bedford, and Paoli, Ind.; Orangeburg, S.C.; Danville, Ind.; and Manning and Kingstree, S.C. The proposals to assign channels to Anamosa, Iowa, and Coal City, Ill., are withdrawn for lack of continuing interest by the proponents. The specific proposals are discussed below.

3. Coal City, Ill. (RM-1489). As a result of a petition filed by Grundy County Broadcasters, Inc., a daytime-only AM licensee at Morris, Illinois, we invited comments on the proposal to assign Channel 288A to Coal City, Ill., or as alternatives, to Dwight or Marseille, Ill. The record shows that Grundy County entered into an agreement, after the notice of proposed rule making was released, to acquire an FM station at Morris, Illinois, and it is no longer interested in the channel assignment at Coal City.[1] No interest was shown for the assignment of a channel to the alternative communities. Thus, we have reconsidered and will withdraw the proposal to assign Channel 288A to this area of Illinois.

4. St. Charles, Mo. (RM-1523). The proposal of Contemporary Media, Inc., would assign Channel 246 to St. Charles, Mo., by shifting the assignment at St. Louis, Mo. from Channel 243 to 242. Channel 243 is presently assigned to Station KADI, St. Louis. The proposal would provide for a first FM station and the second aural facility (first at night) to St. Charles, a community of 31,834 persons and the seat of St. Charles County (population 92,954). Although located about 19 miles from St. Louis and in its SMSA, St. Charles is an independent community with its own city government

[1] On Aug. 23, 1971, the license of Station WRMI-FM, Morris, Ill., was assigned to Grundy County Broadcasters, Inc. (BALH-1538). The previous licensee of this station, Radio Morris, had filed an opposition to the original petition, on the basis of economic injury which it claimed would result to it from the AM-FM combination contemplated by Grundy County Broadcasters, since Coal City and Morris are in the same county and less than 10 miles apart.

and St. Charles County is not adjacent to the city of St. Louis. It has no FM assignments or AM stations except one daytime-only at St. Charles, licensed to petitioner. The notice, which invited comments on the proposal, raised questions as to whether the station would be primarily a St. Louis station outlet and requested additional information on the preclusion. As far as it appears, this is the only way a channel can be assigned to St. Charles.

5. Comments were filed by Paul L. Blair, Jr., a potential applicant, and Contemporary, both urging assignment of the channel to St. Charles. Contemporary assures that the station would be used as a local St. Charles outlet and would be programed to serve the community needs which would be determined by surveys, and points to its daytime AM operation, during the 1970 composite week, as having devoted 60 percent of its news to items of local origin and a great number of 185 public service announcements which were in behalf of St. Charles' organizations. The study indicates that some preclusion would occur on Channels 246, 247, and 249A, but assignments could be made on Channel 244A in the areas precluded on Channel 246 and 247. The preclusion on Channel 249A is limited to a small area where a community of only 119 persons is involved. The study also shows that, by having KADI change its operation to Channel 242, Channel 244A would be available, theoretically, for an additional five assignments.

6. In view of the above, the public interest would be served by adopting the proposal to assign Channel 246 to St. Charles, Mo. Any applicant for Channel 246 at St. Charles would have to specify a transmitter site located approximately 15 miles north or 32 miles southwest of St. Charles, Mo. The party becoming the permittee on Channel 246 shall reimburse Station KADI for the reasonable cost involved in changing its channel.

7. Anamosa, Iowa (RM-1540). Although the request for a first assignment at Anamosa, Iowa, would have resulted in a mixture of Class A and C channels at Iowa City, Iowa, we proposed to assign Channel 232A at Anamosa and Channel 228A at Iowa City, Iowa. Channel 228A was proposed as a substitute for Channel 230, which had to be deleted to make the Anamosa assignment. In addition to an FM educational station licensed to the University of Iowa, Iowa City now has two commercial channels assigned, both Class C, the other occupied by a station licensed to the commercial daytime AM licensee. An opposition to the proposal was filed by Communicators, Inc., potential applicant for Channel 230 at Iowa City. It contends that there is a greater need for a Class C channel at Iowa City, because it would provide first and second FM services to substantial areas and the two proposed Class A channels at Anamosa and Iowa City would not provide such services. Its allegations are supported by an engineering affidavit.

8. In setting forth a notice of proposed rule making to amend the FM Table of Assignments, we required the proponents of the various proposals to file comments as a means of ascertaining whether they had continuing interest in their proposals. Since the petitioner for the Anamosa assignment has not submitted any comments or reply comments, and comments were filed urging the retention of Channel 230 at Iowa City, we will reconsider our proposal as to Anamosa and retain the assignment of Channel 230 as a second Class C commercial assignment at Iowa City, Iowa (population 46,850). Charles Leonard 55230 (5) Day Lino 66-000 Folio 4241 11-3-71

9. Terrell, Tex. (RM-1552). Billy D. Pirtle proposes assignment of Class C Channel 300 to Terrell, Tex. (population 14,182) which would require deletion of that channel at Corsicana, Tex. (population 19,972) and replacing it with Channel 228A. The assignment would provide for a first FM station at Terrell. As an alternative, he proposes Channel 296A which could be assigned there without changing any assignments. In either case, the transmitter site must be located about 6 miles east of Terrell. However, an FM station, located at such a distance from the community, would be able to provide the required principal-city coverage even with Class A facilities.

10. In the notice, we stated that we are not persuaded that Channel 300 should be removed from Corsicana, but suggested that, if a suitable replacement channel could be found, we might give consideration to assigning Channel 300 to Terrell. Channel 228A, proposed as a substitute channel for Corsicana, cannot be assigned there because the transmitter site must be located at least 10 miles east of Corsicana. This limitation is the result of minimum separation requirements from the transmitter sites of Station KBUY-FM, Channel 230, at Fort Worth, Tex., and Station KLEN-FM, Channel 227, at Killeen, Tex. A Class A station, located at such a distance, would not be able to provide the requisite 70 dbu signal over the community. Since the petitioner has not shown a suitable replacement channel for Corsicana, and it appears that a suitable channel cannot be found without drastic shuffling of the number of presently assigned channels, we are retaining the assignment of Channel 300 at Corsicana. As to Channel 296A, it seems that it is the only channel available which is assignable to Terrell. Thus we will make this assignment to Terrell, Tex.

11. Sullivan, Bedford, and Paoli, Ind. (RM-1554). Donnie Joe Spiller proposed assignment of Channel 237A to Sullivan, Ind., by replacing the presently assigned Channel 237A at Bedford, Ind., with Channel 288A, and assigning Channel 237A to Paoli, Ind. Bedford's present channel has been recently assigned for use at Paoli, some 22 miles away, as a result of an application filed before the adoption of the current rule limiting the use of a Class A channel to 10 miles from the listed community, and granted on September 13, 1971. Although no comments were filed with respect to the proposed assignment at Sullivan, the record indicates that there is interest in the replacement channel at Bedford. Thus the public interest would be served to adopt the proposed assignments because the net effect would be the addition of two FM channels in this area of Indiana, a channel would be available in Bedford, and the use of Channel 237A at Paoli would be consistent with the current § 73.203(b) of the rules. Channel 288A at Bedford must be used at a point two miles southwest of the community, and Channel 237A at Sullivan at a point north, northwest or west.

12. Orangeburg, S.C. (RM-1559). Radio Orangeburg, Inc., licensee of AM Station WORG, petitioned for assignment of Channel 280A to Orangeburg, S.C. We found that the rule making on the proposal was clearly warranted because it would provide for a second FM station in the community, which is the county seat and the largest city in the county (city population 13,252), and the assignment of this channel would result in a very limited preclusion on one channel in an area which already has an FM assignment and appears not to warrant an additional assignment. Comments were filed only by Radio Orangeburg, urging the assignment of the channel, and stating that it would apply for its use as soon as it becomes available. We will thus adopt the proposed assignment of Channel 280A to Orangeburg, S.C. The transmitter site must be located south of Orangeburg.

13. Danville, Ind. (RM-1563). On petition filed by United Broadcasting Co., Inc., licensee of Station WWVR-FM, West Terre Haute, Ind., a notice was issued inviting comments on a proposal to assign Channel 296A to Danville, Ind., a community located approximately 20 miles west of Indianapolis. The requested assignment would provide for a first local aural facility to a community of 5,819 persons. No adverse preclusionary effects would occur from the proposed assignment. Comments were filed only by United Broadcasting in support of the proposal, although earlier the licensee of Station WJMK, Plainfield, Ind., had filed an opposition to the petition on economic injury grounds.[2] We believe that the public interest would be served to assign Channel 296A to Danville, Ind. Any applicant for this channel here must specify a site at least 2 miles northwest or west of Danville.

14. Manning, S.C. (RM-1571). As a result of a petition filed by Clarendon County Broadcasting Co., Inc., licensee of AM Station WYMB, a notice of proposed rule making was given proposing to assign Channel 221A to Manning, S.C. Although the FM Table reflects the assignment of Channel 261A at Manning, the channel is utilized at Kingstree, S.C., about 22 miles away in a different county. Thus, in reality, the requested channel would provide for a first FM

[2] Plainfield and Danville are some 8 miles apart, both in Hendricks County (1970 population 53,974), which has no AM stations. This county is in the Indianapolis Standard Metropolitan Statistical Area (SMSA) although not its central county. Danville is the county seat, but Plainfield is the larger community (populations 8,211 and 5,819).

station at Manning, a community of 4,025 persons, the county seat and the largest city in Clarendon County. We found preclusionary effects on some of the channels, but we concluded that no adverse impact would occur to prevent consideration of the proposal.

15. Comments were filed only by Clarendon County Broadcasting, in support of the proposal. It appears that it would be in the public interest to assign Channel 221A to Manning, and shift the assignment of Channel 261A from Manning to Kingstree, S.C., keeping the assignment consistent with the provisions of § 73.203(b) of the rules.

16. In view of the foregoing: *It is ordered,* That, pursuant to section 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, effective December 14, 1971, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended: (a) By the addition of the following entries:

City	*Channel No.*
Danville, Ind	296A
Paoli, Ind	237A
Sullivan, Ind	237A
St. Charles, Mo	246
Kingstree, S.C	261A
Terrell, Tex	296A

(b) To change the entries for the following cities to read as indicated:

City	*Channel No.*
Bedford, Ind	288A
St. Louis, Mo	222, 229, 242, 251, 273, 277, 299
Manning, S.C	221A
Orangeburg, S.C	280A, 294

17. *It is further ordered,* That effective December 14, 1971, the outstanding license held by Vanguard Broadcasting Corp. for Station KADI, St. Louis, Mo., is modified to specify operations on Channel 242 in lieu of Channel 243, subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than December 14, 1971, of its acceptance of this modification.

(b) The licensee shall submit to the Commission by January 4, 1972, all necessary information complying with the applicable technical rules for modification of authorization to cover the operation of Station KADI on Channel 242 at St. Louis, Mo.

(c) The licensee may continue to operate on Channel 243 under its outstanding authorization until December 14, 1971, or until 45 days after it receives notice from the Commission that a station is authorized to operate on Channel 246 at St. Charles, Missouri, whichever is later, or the licensee is ready to operate earlier on the new frequency and submits an application for an FM broadcast station license with proof of performance measurement data to demonstrate compliance with technical performance requirements of the rules. The licensee shall not operate on Channel 242 without prior authorization from the Commission.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: October 28, 1971.

Released: November 1, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[3]
BEN F. WAPLE,
Secretary.

[FR Doc.71-16155 Filed 11-3-71;8:55 am]

[Docket No. 19086; FCC 71-1104]

EXPANDED USE OF NONVOICE EMISSIONS

Memorandum Opinion and Order

In the matter of expanded use of nonvoice emission under Parts 89, 91, and 93 of the Commission's rules, Docket No. 19086, RM-1458.

1. On August 18, 1971, the Commission adopted a report and order (36 F.R. 16914, August 26, 1971) in the above-entitled matter which amended rules in Parts 89, 91, and 93 to permit regular and expanded operation of nonvoice radio systems on voice channels in the land mobile radio services below 950 MHz. Two petitions for reconsideration of certain of these rule changes have been submitted. One of these concerns rule changes which require that both nonvoice and voice operations must be identified by voice transmission. The Associated Public-Safety Communications Officers, Inc. (APCO), has petitioned for reconsideration of this limitation. Another new provision requires that nonvoice systems employ automatic sensing devices to prevent transmission on an occupied channel. Reconsideration of this requirement has been requested by RYDAX, Inc.

2. APCO's petition requests an exception to the requirement for station identification by voice in order to accommodate "use by certain public safety agencies of International Morse Code for automatic station identification." APCO also asks that the 2-second limitation adopted for duration of nonvoice signals be expanded to 6 seconds to cover the normal transmission time for identification by morse code and notes that it "remains concerned that certain other nonvoice transmission useful in public safety communications may also require more than the permitted 2 seconds."

3. It does not appear to the Commission that automatic morse code identification affords significant advantages which warrant reconsideration of the adopted rule changes. On the contrary, use of morse code and the additional transmitting time required for this mode is inconsistent with purposes for which expanded use of nonvoice techniques is now allowed. These include "speeding-up communications" by encouraging development and use of more efficient digital systems and reducing potential interference by prohibition of methods that utilize excessive air time. These considerations are fully discussed in our report and order and APCO has not presented any new or compelling factors which prompt a different conclusion. Accordingly, we are denying the APCO reconsideration petition.

4. APCO also requested clarification as to the status of Police Radio licensees who were granted special authorizations to use automatic morse code station identification under the former rules. These few licensees have made a substantial investment in equipment for this technique and it was not intended that their special authorizations be voided by the new requirements. Thus, the current authorizations which permit transmissions of the station identification by morse code will be permitted to continue. However, as noted in our report and order, the possibility of automatic identification of land mobile stations is being considered by the staff and present provisions and exceptions may be revised in connection with that action.

5. The other petition, from RYDAX, concerns the following new provision related to preventing interference to voice communications by nonvoice transmissions: "Sensoring or monitoring devices must be employed to minimize interference to cochannel transmissions and shall be incorporated as automatic circuitry in the associated receiver to prevent nonvoice signaling in the presence of another signal."

6. RYDAX, whose position is supported in comments from General Electric Co. (GE), and RCA Corp. (RCA), requests that this requirement be deleted or, in the alternative, that its effective date be stayed "until this matter can be properly considered." RYDAX bases this request on its experience with the development of "automatic circuitry devices for sensoring or monitoring" which it contends shows that the "goal" of such devices "cannot be fulfilled (with a few exceptions) unless or until there is a technical breakthrough * * *" In the same vein, GE refers to the need for further technical development of these devices and states that "it is premature to establish requirements and standards for them or to determine their adequacy for protecting voice transmissions." GE advocates a permissive rather than a mandatory approach to aid in this development stating "we believe that automatic monitoring devices may be appropriate in some systems and that the Commission should allow their use during the immediate future when the Commission is seeking to optimize the nonvoice/voice channel use."

7. The Commission has reevaluated this requirement in the light of the arguments presented by the petitioner and by supporting comments of GE and RCA. It now appears that, while the objective of the sensing device requirement is sound (that it could be an

[3] Commissioner Reid not participating.

effective method of enforcing the secondary status of nonvoice communications on land mobile frequencies), significant questions have been raised as to whether use of these devices across the board is practical at this time in the land mobile environment. As mentioned, our basic objective was to protect voice communications against interference from nonvoice transmissions on the same frequencies within the same operating area. However, the petitioner has pointed out that sensing devices would react to the presence of all kinds of signals because they cannot discriminate between cochannel voice transmissions and signals emanating from other sources, such as, intermodulation within the receiver, transmissions from distant stations, and other sources. This would cause unnecessary and in many cases unwarranted "lock out" of the transmitter. Thus, we agree with the comments of GE that the requirement for such devices should not be imposed until this matter is considered after we have had experience with nonvoice communications and until technical operational standards for automatic monitoring and sensing devices have been established. For these reasons, the Commission has determined to grant RYDAX's petition for reconsideration and to delete the immediate requirement for use of these devices. We are also adopting GE's suggestion to permit the use of such devices by licensees who can adapt them to their systems. It should be emphasized, however, that although we are not requiring the use of these devices, we will not accord nonvoice communications "equal priority" with voice communications as advocated by RYDAX. Licensees will be expected, therefore, to employ effective procedures, including sensing devices where feasible, to avoid interference to voice communications.

8. In consideration of the foregoing, the petition for reconsideration submitted by the Associated Public-Safety Communications Officers, Inc., is denied and the petition for reconsideration submitted by RYDAX, Inc., is granted.

9. Accordingly, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended: *It is ordered,* That Parts 89, 91, and 93 of the Commission's rules are amended as set forth below. *It is further ordered,* That, since these amendments relieve licensees of a restriction on the operation of nonvoice radio systems, the effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) do not apply. This amendment shall become effective November 12, 1971. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: October 28, 1971.

Released: November 1, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[1] Commissioner Johnson concurring in the result; Commissioner Reid not participating.

Parts 89, 91, and 93 of the Commission's rules are amended as follows:

PART 89—PUBLIC SAFETY RADIO SERVICES

1. Section 89.105(d)(3) is revised to read as follows:

§ 89.105 Types of emission.

* * * * *

(d) * * *

(3) Sensing or monitoring devices may be employed to minimize interference to cochannel transmissions and may be incorporated as automatic circuitry in the associated receiver to prevent nonvoice signaling in the presence of another signal.

PART 91—INDUSTRIAL RADIO SERVICES

2. Section 91.103(b)(3) is revised to read as follows:

§ 91.103 Types of emission.

* * * * *

(b) * * *

(3) Sensing or monitoring devices may be employed to minimize interference to cochannel transmissions and may be incorporated as automatic circuitry in the associated receiver to prevent nonvoice signaling in the presence of another signal.

PART 93—LAND TRANSPORTATION RADIO SERVICES

3. Section 93.103(b)(3) is revised to read as follows:

§ 93.103 Types of emission.

* * * * *

(b) * * *

(3) Sensing or monitoring devices may be employed to minimize interference to cochannel transmissions and may be incorporated as automatic circuitry in the associated receiver to prevent nonvoice signaling in the presence of another signal.

[FR Doc.71-16156 Filed 11-3-71;8:55 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-36; Amdt. Nos. 171-13, 174-11, 175-6, 177-18]

RADIOACTIVE MATERIALS

Reporting Requirements

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to make reporting requirements for incidents involving radioactive materials consistent with reporting requirements applicable to other hazardous materials.

On July 9, 1971, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-36; Notice No. 71-22 (36 F.R. 12913), which proposed this amendment. Interested persons were invited to give their views and several comments were received by the Board. Most comments were in support of the proposal.

Several commenters correctly noted that reference to § 173.399 in §§ 174.588, 175.655, and 177.861 should be to § 173.397. These changes have been made.

One commenter was concerned that difficulties might arise with a requirement to report when "suspected" radioactive contamination is involved. This commenter stated that the requirement for reporting should be conditioned upon observed leakage only and cited as a reason the lack of availability of radiation detection equipment to many carriers. The Board is particularly concerned with failures to report because of this lack of detection devices. It recognizes that when radioactive contamination occurs, detailed investigation, extensive tracing, and many contacts with potentially exposed persons may become necessary. The time, effort, and cost incurred in such cases dictate that incidents be reported as quickly as possible to minimize the extent and effect of any possible radioactive contamination. Therefore, suspect situations warrant a carrier ascertaining the facts and reporting them to the Department. He may not have the means to do this without enlisting aid from knowledgeable and properly equipped organizations. Past history has shown that many carriers are aware of the potential seriousness of contamination to persons, equipment, or facilities, and have requested radiological assistance when in doubt about the integrity of a package. Since this reaction is desired, the Board has concluded that the conditions suggested by the commenter are not warranted.

One commenter recommended that notification be required within 48 hours following a radioactive materials incident, instead of at the "earliest practicable moment." The "earliest practicable moment" policy is consistent with § 171.15(a). By this amendment, the Board is establishing the radioactive material incident described in §§ 174.588, 175.655, and 177.861 as immediately reportable, rather than only reportable within some longer time frame. The nature of a radioactive contamination problem indicates to the Board that immediate reporting to the Department and the shipper involved is particularly essential and entirely appropriate with respect to the public's interest.

It should be emphasized that the reporting requirements for radioactive materials transportation incidents as established by the Board in this amendment are in no way intended to replace or impair the existing national system for obtaining emergency radiological assistance in the event of incidents involving radioactive materials. That system, which is intended to provide response capabilities for radiological monitoring in emergencies, is administered by the U.S.

Atomic Energy Commission and supported by the capabilities of other Federal and State organizations. Further information on that system may be obtained from the U.S. Atomic Energy Commission, Division of Operational Safety, Washington, D.C. 20545.

In consideration of the foregoing, 49 CFR Parts 171, 174, 175, and 177 are amended as follows:

PART 171—GENERAL INFORMATION AND REGULATIONS

In § 171.15 paragraph (a)(3) is amended, (a)(4) is redesignated (a)(5), and a new (a)(4) is added to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) * * *

(3) Estimated carrier or other property damage exceeds $50,000;

(4) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. (See also §§ 174.588(c)(1), 175.655 (j)(3), and 177.861(a) of this chapter.); or

* * * * *

PART 174—CARRIERS BY RAIL FREIGHT

In § 174.588, paragraph (c)(1) is amended, Note 2 is canceled as follows:

§ 174.588 Disposition of damaged or astray shipments.

* * * * *

(c) * * *

(1) In addition to the incident reporting requirements of §§ 171.15 and 171.16 of this chapter, the carrier must also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Vehicles, buildings, areas, or equipment in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination (see § 173.397 of this chapter).

NOTE 2: [Canceled]

* * * * *

PART 175—CARRIERS BY RAIL EXPRESS

In § 175.655, paragraph (j)(3) is amended to read as follows:

§ 175.655 Protection of packages.

* * * * *

(j) * * *

(3) In addition to the incident reporting requirements of §§ 171.15 and 171.16 of this chapter, the carrier must also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Vehicles, buildings, areas, or equipment in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination (see § 173.397 of this chapter).

* * * * *

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

In § 177.861, paragraph (a) is amended to read as follows:

§ 177.861 Accidents; radioactive materials.

(a) In addition to the incident reporting requirements of §§ 171.15 and 171.16 of this chapter, the carrier must also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Vehicles, buildings, areas, or equipment in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination (see § 173.397 of this chapter).

* * * * *

This amendment is effective December 31, 1971, however, compliance with the regulations as amended herein is authorized immediately.

(Secs. 831–835, Title 18, U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; Title VI, sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421–1430 and 1472(h))

Issued in Washington, D.C., on October 29, 1971.

W. F. REA III,
Rear Admiral, Board Member, for the U.S. Coast Guard.

MAC E. ROGERS,
Board Member, for the Federal Railroad Administration.

ROBERT A. KAYE,
Board Member, for the Federal Highway Administration.

JAMES F. RANDOLPH,
Board Member, for the Federal Aviation Administration.

[FR Doc.71-16126 Filed 11-3-71;8:53 am]

[Docket No. HM-46; Amdts. 172-12, 173-56, 174-12, 177-19, 178-21]

RAILWAY AND HIGHWAY FUSEES

Reclassification as Flammable Solids

On April 22, 1970, the Hazardous Materials Regulations Board published Docket No. HM-46; Notice No. 70-7 (35 F.R. 6439), proposing reclassification of railway and highway fusees from explosive C to the flammable solid classification.

The reasons for the Board's decision to propose reclassification were set forth in the notice of proposed rule making. The Board specifically pointed out that it did not agree with a petition that shipments of fusees should be exempted from the labeling and placarding requirements of the Hazardous Materials Regulations. The original petition filed for reclassification did not contain supporting data for such exemptions.

Interested persons were invited to give their views on the proposal. Initially many of the comments received did not question the reclassification but requested withdrawal of the notice because of the labeling and placarding requirements. Subsequently, the commenters amended their requests for withdrawal of the notice, and now agree with the Board's decision. On the basis of the original petition for rule change and the comments received in response to the subject notice, the Board concludes that reclassification and the labeling and placarding requirements are warranted.

The Air Transport Association noted that, as proposed, the new rule would no longer permit fusees to be transported on passenger-carrying aircraft as presently authorized by 14 CFR 103.7(b)(2). The ATA stated it was not aware of difficulties with fusees in air transportation. In response to ATA's comment, a corresponding change is being made in 14 CFR 103.7(b) in this issue of the FEDERAL REGISTER to eliminate this unintended restriction.

In consideration of the foregoing, 49 CFR Parts 172, 173, 174, 177, and 178 are amended as follows:

PART 172—COMMODITY LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 170–189 OF THIS CHAPTER

In § 172.5 paragraph (a), the commodity list is amended as follows:

§ 172.5 List of hazardous materials.

(a) * * *

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in one outside container by rail express
Cancel				
Highway fusees	Expl. C	No exemption, 173.193		200 pounds.
Railway fusees	do	do		Do.
Add				
Fusees (railway and highway)	F.S	No exemption, 173.154	Yellow	Do.
* * *	* * *	* * *	* * *	* * *

PART 173—SHIPPERS

(A) In Part 173 Table of Contents § 173.108 is amended; § 173.154a is added to read as follows:

Sec.
173.108 Common fireworks, signal flares, hand signal devices, smoke signals, smoke candles, smoke grenades, smokepots, and Very signal cartridges.
173.154a Fusees.

(B) In § 173.100, paragraph (y) is amended to read as follows:

§ 173.100 Definition of Class C explosives.

* * * * *

(y) Smoke candles, smokepots, smoke grenades, smoke signals, signal flares, hand signal devices, and Very signal cartridges are devices designed to produce visible effects for signal purposes. These devices must contain no bursting charges and no more than 200 grams of pyrotechnic composition each (see note 1), exclusive of smoke composition (see note 2), unless greater weight of composition is approved by the Bureau of Explosives.

* * * * *

(C) In § 173.108 the heading, the introductory text of paragraph (a), and paragraph (a)(5) are amended; paragraph (a)(6) is added; paragraph (b) is canceled; paragraph (d) is amended to read as follows:

§ 173.108 Common fireworks, signal flares, hand signal devices, smoke signals, smoke candles, smoke grenades, smokepots, and Very signal cartridges.

(a) Class C explosives covered by this section must, unless otherwise specifically provided for, be securely packed in packages complying with the following specifications.

* * * * *

(5) Fireworks, such as sparklers, with match tip or head, or similar ignition point or surface, must have each individual tip, head, or similar ignition point or surface entirely covered and securely protected against accidental contact or friction.

(6) Signal flares may be packed with nonexplosive or nonflammable articles provided the outside packages are marked as prescribed in this section.

(b) [Canceled].

* * * * *

(d) Each outside package must be plainly marked in letters not less than seven-sixteenths of an inch in height "Common Fireworks," "Signal Flares," "Hand Signal Devices," "Smoke Signals," "Smoke Candles," "Smoke Pots," "Smoke Grenades," or "Very Signal Cartridges," as appropriate, and with the additional words "Handle Carefully—Keep Fire Away."

(D) Section 173.154a is added to read as follows:

§ 173.154a Fusees.

(a) A fusee is a device designed to burn at a controlled rate and to produce visible effects for signaling purposes. It consists of a pasteboard or fiber tube containing a colored flare mixture and with or without a means of support. The composition of the fusee must be such that spontaneous ignition does not occur when the moistened composition is exposed to a temperature of 212° F. for 72 consecutive hours. Fusees must have individual tip, head, or similar ignition point or surface entirely covered and securely protected against accidental contact or friction. Fusees must be securely packed in packages complying with the following specifications:

(1) Specifications 15A, 15B, 15C, 16A, 19A, or 19B (§§ 178.168, 178.169, 178.170, 178.185, 178.190, 178.191 of this chapter). Wooden boxes having a gross weight not to exceed 150 pounds for specification 19B boxes; 200 pounds for the other boxes. When specification 15C boxes are used, devices must be packed in airtight inside metal receptacles.

(2) Specification 12B (§ 178.205 of this chapter) fiberboard boxes. Boxes must have reinforced ends proven to be capable of preventing penetration of spikes through the outside box when a sample package, prepared as for shipment, is subjected to two drops from a height of 4 feet onto a solid surface. The package must be dropped so as to strike diagonally with the spikes in a downward position. Gross weight not to exceed 65 pounds except that gross weight not to exceed 75 pounds is authorized in boxes made in accordance with § 178.205-24 of this chapter.

(3) Specification 29 (§ 178.226 of this chapter). Mailing tubes, provided the penetration of the spikes of the fusees through the outside container is prevented by the method specified for fiberboard boxes, specification 12B, in subparagraph (2) of this paragraph. Gross weight not to exceed 5 pounds.

(4) Fusees without spikes when offered for shipment may be packed in packages prescribed in this paragraph, omitting the protection required for these devices when equipped with spikes.

(5) Fusees may be packed with nonexplosive or nonflammable articles provided the outside packages are marked as prescribed in this section.

(b) Each outside package must be plainly marked in letters not less than seven-sixteenths inch in height "Fusees" and with the additional words "Handle Carefully—Keep Fire Away."

PART 174—CARRIERS BY RAIL FREIGHT

(A) In Part 174 Table of Contents, § 174.538 is amended to read as follows:

Sec.
174.538 Loading and storage chart of hazardous materials.

(B) § 174.538 the heading is amended; in paragraph (a) item 9 of the loading and storage chart is amended in both the vertical and horizontal columns to read as follows:

§ 174.538 Loading and storage chart of hazardous materials.

(a) * * *

Item 9—Fireworks, common.

* * * * *

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

(A) In Part 177 Table of Contents, § 177.848 is amended to read as follows:

Sec.
177.848 Loading and storage chart of hazardous materials.

(B) In § 177.848 the heading is amended; in paragraph (a) item 9 of the loading and storage chart is amended in both the vertical and horizontal columns to read as follows:

§ 177.848 Loading and storage chart of hazardous materials.

(a) * * *

Item 9—Fireworks, common.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

(A) In § 178.205-24 the heading and paragraph (a) are amended to read as follows:

§ 178.205 Specification 12B; fiberboard boxes.

§ 178.205-24 Special box; authorized only for fusees.

(a) Must comply with this specification except that the box must be constructed of double faced corrugated fiberboard at least 400-pound test or solid fiberboard of same strength. Lining and pads are not required. Authorized gross weight is 75 pounds. For fusees equipped with spikes, box-end protection as required in § 173.154a(a)(2) of this chapter must be provided.

* * * * *

This amendment is effective December 31, 1971, however, compliance with the regulations, as amended herein, is authorized immediately.

(Secs. 831-835, title 18, U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI, sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430 and 1472(h))

Issued in Washington, D.C., on October 29, 1971.

W. F. REA III,
Rear Admiral, Board Member, for the U.S. Coast Guard.

MAC E. ROGERS,
Board Member, for the Federal Railroad Administration.

ROBERT A. KAYE,
Board Member, for the Federal Highway Administration.

JAMES F. RUDOLPH,
Board Member, for the Federal Aviation Administration.

[FR Doc.71X16127 Filed 11-3-71;8:53 am]

Chapter X—Interstate Commerce Commission

PART 1033—CAR SERVICE

[S.O. No. 1083]

Southern Pacific Transportation Co. Authorized To Operate Over Tracks of The Texas and Pacific Railway Co.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of October 1971.

It appearing, that because of severe track damage caused by floods and washouts, the Southern Pacific Transportation Co. is unable to operate over its line from Commerce, Tex., to Paris, Tex., and is unable to continue service to shippers located at various points on this line; that The Texas and Pacific Railway Co. has consented to use of its tracks by the Southern Pacific Transportation Co. between a point of connection between these companies at Texas and Pacific milepost 91.7 at Paris, Tex., and another point of connection at Texas and Pacific milepost 154.5 at Sherman, Tex., a distance of 62.8 miles; that the Commission is of the opinion that operation by the Southern Pacific Transportation Co. over this trackage of The Texas and Pacific Railway Co. is necessary in the interest of the public and the commerce of the people, pending completion of repairs to the line of the Southern Pacific Transportation Co.; that notice and public procedure herein are impractical and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1083 Service Order No. 1083.

(a) *Southern Pacific Transportation Co. authorized to operate over tracks of The Texas and Pacific Railway Co.* The Southern Pacific Transportation Co. be, and it is hereby, authorized to operate over tracks of The Texas and Pacific Railway Co. between a point of connection between these companies at Texas and Pacific milepost 91.7 at Paris, Tex., and another point of connection at Texas and Pacific milepost 154.5 at Sherman, Tex., a distance of 62.8 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the Southern Pacific Transportation Co. over tracks of The Texas and Pacific Railway Co. is deemed to be due to carrier's disability, the rates applicable to traffic moved over the tracks of The Texas and Pacific Railway Co. by the Southern Pacific Transportation Co. shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., October 29, 1971.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., December 15, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1 (10-17), 15(4), and 17(2), 40 Stat. 101, as amended; 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16152 Filed 11-3-71;8:54 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Imperial National Wildlife Refuge, Ariz. and Calif.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-4-71).

§ 28.28 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Imperial National Wildlife Refuge, Ariz. and Calif., is open to public access, use, and recreation, except where prohibited by appropriate signs, subject to the provisions of Title 50, Code of Federal Regulations, all applicable Federal and State laws and regulations, and the following special regulations:

(a) Camping is limited to five (5) consecutive days per visit, providing that visitors comply with paragraph (c).

(b) Picnicking is permitted throughout the refuge except where restricted by appropriate signs and in those areas closed to public entry.

(c) Dumping of sewage or liquid wastes from campers, trailers, or boats is prohibited.

(d) Campfires are permitted but must be attended at all times.

(e) Pets are permitted only if they are confined or kept on a leash not to exceed ten (10) feet in length one end of which is secured so as to restrict the movements of the animal.

(f) Boating is permitted in all waters of the refuge except where prohibited by appropriate signs and in those areas closed to public entry.

(g) Waterskiing is permitted only in the main channel of the Colorado River and shall be in accordance with applicable Federal and State laws and regulations.

(h) Hiking, sightseeing, and photography are permitted except in those areas closed to public entry.

(i) Blocking of boat ramps or routes of public access is prohibited.

(j) An area on the west end of Martinez Lake consisting of approximately 175 acres shall be closed to public entry during the following periods: January 1 through February 28, 1972; inclusive; and October 1 through December 31, 1972, inclusive. This area shall be designated by a line of buoys across Martinez Lake posted with appropriate signs.

Areas closed to the public are delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on national wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

ROBERT W. THOESEN, *Refuge Complex Supervisor, Imperial National Wildlife Refuge, Yuma, Ariz.*

OCTOBER 19, 1971.

[FR Doc.71-16068 Filed 11-3-71;8:47 am]

PART 32—HUNTING

National Wildlife Refuges in Certain States

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (11-4-71).

§ 32.12 Special regulations; migratory birds; for individual wildlife refuge areas.

ALABAMA

WHEELER NATIONAL WILDLIFE REFUGE

Hunting of geese, ducks, and coots on the Wheeler National Wildlife Refuge, Ala., is suspended for the 1971-72 season due to a serious decline in numbers of wintering geese in the refuge area.

FLORIDA

CHASSAHOWITZKA NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Chassahowitzka National Wildlife Refuge, Fla., is permitted only on the area designated by signs as open to hunting. The open area, comprising 2,500 acres, is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of

Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations governing the hunting of ducks and coots subject to the following special conditions:

(1) Hunting will be permitted only on Wednesdays through Sundays.

(2) Only temporary blinds constructed of native vegetation are permitted.

(3) Designated routes of travel must be used for entering or leaving the public hunting area.

(4) A Federal permit is required for the use of airboats in the refuge area. All airboats must be equipped with exhaust mufflers.

(5) All guns must be unloaded and cased while hunters are traveling to and from the hunting area.

(6) Decoys will be retreived by hunters at the end of each day's hunt.

LOXAHATCHEE NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Loxahatchee National Wildlife Refuge, Fla., is permitted only on the area designated by signs as open to hunting. This open area, comprising 29,000 acres, is delineated on a map available at the refuge headquarters, Delray Beach, Fla., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks and coots subject to the following special conditions:

(1) Only temporary blinds constructed of native vegetation are permitted.

(2) Hunters must enter and leave the refuge by either the S-39 landing or the headquarters landing and must use the following designated routes of travel to and from the hunting area; those portions of Canal 40 and Canal 39 (Hillsboro Canal) immediately east and south of the hunting area; also the refuge marsh areas near the headquarters landing and the S-30 landing lying between the hunting area and portions of canals described above. No hunting is permitted in or over these designated routes of travel.

(3) While using designated routes of travel to and from the hunting area, hunters must have their shotguns unloaded and dismantled or cased.

(4) Air-thrust boats may be authorized for use only by special permit issued by the Refuge Manager.

(5) The possession or use of shotgun shells with shot size larger than No. 4 shot is prohibited.

(6) All public use within the refuge during the hunting season is limited to the period each day from 1½ hours before sunrise to 1 hour after sunset.

MERRITT ISLAND NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Merritt Island National Wildlife Refuge, Fla., is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 18,636 acres, are delineated on a map available at the refuge headquarters, Merritt Island National Wildlife Refuge, Fla., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks and coots subject to the following special conditions:

(1) In Hunting Area No. 1, hunting will be permitted only from one-half hour before sunrise until noon on Sundays, Tuesdays, Thursdays, and Saturdays.

(2) In Hunting Area No. 2, subject to security requirements of the Director, Kennedy Space Center, hunting will be permitted from one-half hour before sunrise to sunset only on Sundays, Tuesdays, Thursdays, and Saturdays.

(3) A refuge permit is required of all hunters in both areas on Holidays, Saturdays, and Sundays. Applications must be received no later than 2 weeks prior to the hunt date. Only one application may be submitted for any 1 day.

(4) Air-thrust boats are not permitted on the refuge.

(5) Hunters under 16 years of age must be accompanied by an adult 21 years of age or older.

(6) In Hunting Area No. 2 no shooting is permitted from or across the railroad right-of-way or any hard-surfaced road.

GEORGIA

EUFAULA NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Eufaula National Wildlife Refuge, Ga., is permitted only on the area designated by signs as open to hunting. This open area, comprising 770 acres, is delineated on a map available at the refuge headquarters, Eufaula, Ala., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks and coots subject to the following special conditions:

(1) Hunting will be permitted only on Saturdays with the exception of Christmas and New Years. Wednesday, December 22 and Wednesday, December 29 will be substituted for those days. Hunting hours will be from one-half hour before sunrise to 11:30 a.m. during the waterfowl season.

(2) Hunters must hunt only from designated blinds provided and located by the Bureau. Shooting is not permitted outside of designated blind zones.

(3) Guns must be unloaded while being transported on the refuge and while being carried to and from the blinds.

(4) Each hunter is limited to no more than 15 shells in his possession. Shells with shot larger than No. 4 are prohibited.

(5) Hunters are required to check in and out of the hunt area and must present all bagged game for inspection.

(6) A refuge permit is required. A blind fee of $6 per blind will be charged at the time permits are issued prior to each day's hunt.

(7) Applications for advance reservations for refuge permits must be received by the Refuge Manager, Eufaula Refuge, Eufaula, Ala., prior to 12 noon, November 1, 1971. Successful applicants will be determined by an impartial drawing.

(8) Hunters under 18 years of age must be accompanied by an adult, 21 years of age or older.

(9) Blind reservations are nontransferable.

LOUISIANA

LACASSINE NATIONAL WILDLIFE REFUGE

Public hunting of waterfowl is permitted on Lacassine National Wildlife Refuge, La., only on the area designated by signs as open to hunting. The open area comprises 6,400 acres or approximately 20 percent of the total refuge area and is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Waterfowl hunting shall be in accordance with applicable State and Federal regulations subject to the following special conditions:

(1) Waterfowl hunting is permitted 5 half-days per week, Wednesday through Sunday, during the periods November 11-28, 1971, and December 11, 1971, through January 9, 1972, except no hunting Christmas Day, December 25.

(2) Shooting hours: One-half hour before sunrise to 12 noon daily. Hunters may enter the refuge 2 hours prior to shooting time and must depart the hunting area by 1 p.m.

(3) Temporary blinds of native vegetation may be constructed or portable blinds can be carried in for each hunt.

(4) During the waterfowl season only, small boats may be left on the area at the owners risk provided they do not block traffic and provided they are removed from the refuge not later than January 9, 1972. Airboats may not be used on the refuge.

(5) The use of retriever dogs is permitted and encouraged but they must be under control at all times.

(6) Hunting is not permitted within refuge waterways and hunters must station themselves a minimum of 50 yards inland from all streams and canals. Hunting along lake and pond edges is permissible.

(7) All guns must be encased or dismantled while traveling through waterways.

(8) Hunters shall not interfere with any refuge trapper during his daily rounds nor disturb any trap or set.

MISSISSIPPI

NOXUBEE NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Noxubee National Wildlife Refuge, Miss., is permitted only on the area designated by signs as open to hunting. The open area of 520 acres is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and

Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations governing the hunting of ducks and coots subject to the following special conditions:

(1) Hunting will be permitted only on Mondays, Wednesdays, and Saturdays from one-half hour before sunrise to 12 noon during the period November 21, 1971, through January 15, 1972.

(2) The use of boats with electric motors is permitted within the hunting area.

(3) The construction of blinds is not permitted.

(4) Hunters will not be permitted to enter the hunting area sooner than 15 minutes before legal shooting hours.

(5) All hunters must enter and leave the waterfowl hunting area by way of the designated access point.

(6) No hunter may take more than 16 shotgun shells into the hunting area.

(7) No shooting will be permitted from the levee or the open water area immediately adjacent to the levee.

(8) All hunters are required to check out at the designated check station before leaving the area.

(9) Bag limits: To be set by flyway.

NORTH CAROLINA

MATTAMUSKEET NATIONAL WILDLIFE REFUGE

Public hunting of ducks, geese, and coots on the Mattamuskeet National Wildlife Refuge, N.C., is permitted only on the area designated by signs as open to hunting. This open area, comprising 11,300 acres, is delineated on a map available at the refuge headquarters, New Holland, N.C., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, and coots subject to the following special conditions:

(1) Each hunter is limited to 25 shells per day.

(2) Air-thrust boats are prohibited.

SOUTH CAROLINA

SANTEE NATIONAL WILDLIFE REFUGE

Public hunting of geese, ducks, and coots on the Santee National Wildlife Refuge, Lake Moultrie Unit, S.C., is permitted only on the area designated by signs as open to hunting. This open area, comprising approximately 29,500 acres, is delineated on a map available at refuge headquarters, Summerton, S.C., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of geese, ducks, and coots subject to the following special conditions:

(1) Hunting will be permitted only on Tuesdays, Thursdays, and Saturdays, during the period from December 2, 1971, through January 20, 1972.

(2) Shooting hours are from one-half hour before sunrise until 12 noon. Hunters may not enter the refuge hunting area prior to 1½ hours before sunrise and must be off the hunting area no later than 1 p.m.

(3) Only temporary blinds constructed of native vegetation are permitted. Any blind constructed by a hunter on the hunting area, once vacated, may be occupied by any other hunter on a first come, first served basis.

(4) Boats will not be left in Pinopolis Pool (Hatchery) overnight.

(5) Boat motors of any type, inboard, outboard, gasoline, diesel, air-thrust, or electric are not allowed in Pinopolis Pool (Hatchery).

TENNESSEE

TENNESSEE NATIONAL WILDLIFE REFUGE

Hunting of geese, ducks, and coots on the Tenneseee National Wildlife Refuge, Tenn., is suspended for the 1971–72 season due to a serious decline in numbers of wintering geese in the refuge area.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 20, 1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 22, 1971.

[FR Doc.71-16069 Filed 11-3-71;8:48 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Special Contingency Reserves of Life Insurance Companies

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 6, 1971. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request.

Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by December 6, 1971. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 805 and 810 of the Internal Revenue Code of 1954 to section 907(a) of the Tax Reform Act of 1969 (83 Stat. 715), such regulations are amended as follows:

PARAGRAPH 1. Section 1.805 is amended by revising paragraph (e)(4) and by revising the historical note. These revised provisions read as follows:

§ 1.805 Statutory provisions; life insurance companies; policy and other contract liability requirements.

SEC. 805. *Policy and other contract liability requirements.* * * *

* * * * *

(e) *Interest paid.* * * *

(4) *Interest on certain special contingency reserves.* Interest for the taxable year on special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

[Sec. 805 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 43); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 118); sec. 7, Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 828); sec. 907(a), Tax Reform Act 1969 (83 Stat. 715)]

PAR. 2. Section 1.805-8 is amended by revising paragraph (b)(4) to read as follows:

§ 1.805-8 Interest paid.

* * * * *

(b) *Interest paid defined.* * * *

(4) Interest for the taxable year on special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

PAR. 3. Section 1.810 is amended by adding new subsection (c)(6) and by revising the historical note to read as follows:

§ 1.810 Statutory provisions; life insurance companies; rules for certain reserves.

SEC. 810. *Rules for certain reserves.*

* * * * *

(c) *Items taken into account.* * * *

(6) Special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

* * * * *

[Sec. 810 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 125); amended by section 907(a), Tax Reform Act 1969 (83 Stat. 715)]

PAR. 4. Section 1.810-2 is amended by adding a new subparagraph (6) to paragraph (b) and by revising examples (1) and (3) of paragraph (d) thereof to read as follows:

§ 1.810-2 Rules for certain reserves.

* * * * *

(b) *Items taken into account.* * * *

(6) Special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

* * * * *

(d) *Illustration of principles.* The provisions of section 810 (a) and (b) and this section may be illustrated by the following examples:

Example (1). Assume the following facts with respect to R, a life insurance company:

Sum of items described in section 810 (c) (1) through (6) at beginning of taxable year	$940
Sum of items described in section 810 (c) (1) through (6) at end of taxable year	1,060
Required interest (as defined in section 809(a)(2))	70
Investment yield (as defined in section 804(c))	100
Amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)	70

In order to determine the adjustment for decrease or increase in the sum of the items described in section 810(c) for the taxable year, R must first reduce the sum of such items at the end of the taxable year ($1,060) by the amount of investment yield ($70) not included in gain or loss from operations for the taxable year by reason of section 809(a)(1). Since the adjusted sum of such items at the end of the taxable year, $990 ($1,060 minus $70), exceeds the sum of such items at the beginning of the taxable year, $940, the excess of $50 ($990 minus $940) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining gain or loss from operations.

* * * * *

Example (3). Assume the following facts with respect to S, a life insurance company:

Sum of items described in section 810 (c) (1) through (6) at beginning of taxable year	$1,970
Sum of items described in section 810 (c) (1) through (6) at the end of taxable year	2,010
Required interest (as defined in section 809(a)(2))	60
Investment yield (as defined in section 804(c))	40
Amount of investment yield not included in gain or loss from operations by reason of section 809(a)(1)	40

Under the provisions of section 809(a)(1), since the required interest ($60) exceeds the investment yield ($40), the share of each and every item of investment yield set aside for policyholders and not included in gain or loss from operations for the taxable year shall be 100 percent. Thus, applying the provisions of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year ($2,040) must first be reduced by the entire amount of the investment yield ($40) in order to determine the net increase or decrease in the sum of such items for the taxable year. Since the adjusted sum of such items at the end of the taxable year, $2,000 ($2,040 minus $40), is greater than the sum of such items at the beginning of the taxable year, $1,970, the excess of $30 ($2,000 minus $1,970) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining gain or loss from operations. No additional deduction is allowed under section 809(d) for the amount ($20) by which the required interest exceeds the investment yield for the taxable year.

* * * * *

[FR Doc. 71-16162 Filed 11-3-71;8:55 am]

[26 CFR Part 1]

INCOME TAX

Charitable Remainder Trusts; Notice of Hearing on Proposed Regulations

Proposed regulations under section 664 of the Internal Revenue Code of 1954, relating to charitable remainder trusts, appear in the FEDERAL REGISTER for September 18, 1971 (36 F.R. 18667).

A public hearing on the provisions of these proposed regulations will be held on Wednesday, December 8, 1971, at 10 a.m., e.s.t., in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202-964-3935. Under such § 601.601(a)(3), persons who have submitted written comments or suggestions within the time prescribed in the notice of proposed rule making and who desire to present oral comments should by November 24, 1971, submit an outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who desire a copy of such written comments or suggestions or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by December 1, 1971. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is twenty-five cents ($0.25) per page, subject to a minimum charge of $1.

K. MARTIN WORTHY,
Chief Counsel.

[FR Doc.71-16222 Filed 11-3-71;9:18 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[43 CFR Part 25]

USE OF JOHNNY HORIZON SYMBOL

Notice of Proposed Rule Making

The purpose of this amendment is to provide rules for the commercial manufacture, reproduction, and use of the characterization "Johnny Horizon"—the official symbol for a public service antilitter and environmental cleanup program to maintain the beauty and utility of the Nation's public lands carried on by the Department of the Interior. It also provides guidelines for noncommercial use and for contributions of money and personal property to the "Johnny Horizon" program. These regulations are promulgated in accordance with the Act of September 25, 1970 (82 Stat. 870).

In accordance with the Department's policy on public participation in rule making (36 F.R. 8336) interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until December 16, 1971.

A new Part 25 is added to Subtitle A, Title 43 of the Code of Federal Regulations to read as follows:

PART 25—USE OF THE "JOHNNY HORIZON" SYMBOL

§ 25.0-1 Purpose.

This subpart establishes rules for the commercial and noncommercial use of the "Johnny Horizon" symbol and name.

§ 25.0-2 Objectives.

The objectives of these regulations are (a) to maintain the integrity of the name and characterization of "Johnny Horizon"—the official symbol for a public service antilitter and environmental cleanup program to maintain the beauty and utility of the Nation's public lands, (b) to authorize the noncommercial use of the symbol, and (c) to provide for use or royalty fees for the manufacture, reproduction, or use of the symbol for commercial purposes.

§ 25.0-3 Authority.

The Act of September 25, 1970 (84 Stat. 870) authorizes the Secretary of the Interior to establish and collect use or royalty fees for the manufacture, reproduction, or use of the "Johnny Horizon" name and symbol. The Act makes unauthorized manufacture, reproduction, and use a crime (18 U.S.C. 714). The Act also provides that royalty and use fees will be deposited in a special account and used for the purpose of furthering nationwide antilitter campaigns.

§ 25.0-5 Definitions.

As used in this part:

(a) The term "Johnny Horizon" means the name or characterization "Johnny Horizon" originated by the Bureau of Land Management, Department of the Interior, as the official symbol for a public service antilitter and environmental cleanup program, and as described in 18 U.S.C. 714, the representation of a tall, lean man, with strong facial features, who wears slacks and sport shirt buttoned to the collar (both green, when colored), no tie, a field jacket (red, when colored), boot-type shoes (brown, when colored) and who carries a backpack.

(b) "Director" means the Director of the Bureau of Land Management, or the person he delegates to act for him on matters pertaining to the "Johnny Horizon" program.

(c) "Johnny Horizon program" means those activities and supporting services conducted in furtherance of a public service antilitter and environmental cleanup campaign which uses the "Johnny Horizon" name or symbol.

§ 25.1 Commercial use.

(a) *Licenses.* The "Johnny Horizon" name or symbol may be used for commercial purposes only under a license issued pursuant to the regulations in this part. Licenses will be granted to any individual, business, or corporation if the Director determines that the proposed commercial use will promote the purposes of the "Johnny Horizon" program and will not impair the integrity of the name or symbol.

(b) *Terms and conditions.* In order to maintain the integrity of the "Johnny Horizon" program and to regulate the manufacture, reproduction, and use of the "Johnny Horizon" name and symbol licenses will be subject, but not limited, to the following terms and conditions:

(1) Payment of fair return to the United States for its property through negotiation of use or royalty fees.

(2) Licenses are nontransferable.

(3) All proposed products must be approved by the Director prior to manufacture or reproduction by the licensee. Substances inherently dangerous to users shall not be used.

(4) All licenses shall contain Equal Employment Opportunity provisions in compliance with Executive Order 11246, as amended (30 F.R. 12319 (1965)), and regulations issued pursuant thereto (41 CFR Chapter 60 and Part 17 of this chapter).

(5) Alteration of artwork must first be approved by the Director.

(6) Licenses shall be subject to revocation by the Director at any time he finds that (i) the use involved is injurious to the characterization of "Johnny Horizon," or (ii) there has been a violation of the terms and conditions of the license.

§ 25.2 Noncommercial use.

(a) *Permitted uses.* Products bearing the name or symbol of "Johnny Horizon," provided by the Government or acquired from licensed sources, may be used without a license or advance permission by any person or organization for the purpose of furthering antilitter and environmental cleanup campaigns, provided that no charge is made by the unlicensed user for service or products.

(b) *Technical advice.* To the extent possible, technical advice will be given to interested parties upon request to the Director.

(c) *Cooperation.* The Director may enter into cooperative agreements with other Federal agencies for use of the name or symbol of "Johnny Horizon." Agreements shall state the responsibilities of each agency pertaining to (1) maintaining the integrity of the program, (2) supplying materials, (3) assisting other groups or organizations, (4) restrictions of uses of materials, (5) altering artwork, and (6) making arrangements with public personalities engaged in the program.

§ 25.3 Contributions.

The Director may accept contributions of money and personal property by any

person or organization for use in the "Johnny Horizon" program.

§ 25.4 Unauthorized use.

Manufacture, reproduction, or use of the "Johnny Horizon" name or symbol, except as provided for under these regulations in this part is prohibited (18 U.S.C. 714).

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 20, 1971.

[FR Doc.71-16074 Filed 11-3-71;8:48 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

TOBACCO

Notice of Determinations To Be Made for 1972-73, 1973-74, and 1974-75 Marketing Years

Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing (1) with respect to Cigar-binder (types 51 and 52) and Cigar-filler and binder (types 42-44, 53-55) tobacco, to proclaim national marketing quotas for the 1972-73, 1973-74, and 1974-75 marketing years, and to conduct within 30 days after the proclamation of such national marketing quotas referenda of farmers engaged in the 1971 production of each of such kinds of tobacco to determine whether they favor or oppose marketing quotas for such years; and (2) with respect to Fire-cured (type 21), Fire-cured (types 22-24), Dark air-cured, Virginia sun-cured, Cigar-binder (types 51 and 52), and Cigar-filler and binder (types 42-44, 53-55) tobacco, to determine and announce the national marketing quotas for the 1972-73 marketing year; to convert such marketing quotas into national acreage allotments and announce such allotments; to apportion such national acreage allotments, less reserves of not to exceed 1 per centum of each respectively, through the local committees among old farms; to apportion the aforementioned reserves for use in (a) establishing acreage allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments.

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall proclaim not later than February 1 of any marketing year, with respect to these kinds of tobacco, a national marketing quota for any of such kinds of tobacco for each of the next 3 succeeding marketing years whenever he determines with respect to such kind of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers: *Provided,* That if such producers have disapproved national marketing quotas for 3 successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the 3-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he may prescribe, to proclaim a national marketing quota for each of the next 3 succeeding marketing years.

The Secretary has previously proclaimed quotas and conducted referenda for the various kinds of tobacco with results as follows: Fire-cured for the 1970-71, 1971-72, and 1972-73 marketing years, approved by growers (35 F.R. 4945); Dark air-cured for the 1970-71, 1971-72, and 1972-73 marketing years, approved by growers (35 F.R. 4945); Virginia sun-cured for the 1971-72, 1972-73, and 1973-74 marketing years, approved by growers (36 F.R. 6734); Cigar-binder (types 51 and 52) for the 1969-70, 1970-71, and 1971-72 marketing years, approved by growers (34 F.R. 5903); and Cigar-filler and binder (types 42-44, 53-55) for the 1969-70, 1970-71, and 1971-72 marketing years, approved by growers (34 F.R. 5903).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and Cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 F.R. 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Pursuant to such authority, the Secretary has also determined (22 F.R. 367) that Cigar-binder (types 51 and 52) tobacco, beginning with the 1957-58 marketing year, shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Type 46 tobacco is no longer grown.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1972 with respect to kinds other than Flue-cured tobacco, the amount of the national marketing quota which will be in effect for the 1972-73 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1972-73 national marketing quota (determined pursuant to such section) may, not later than March 1, 1972, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carryover at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C 1312(c)) requires that within 30 days after national marketing quotas are proclaimed under section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a

referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to quotas for the next 3 succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but such results shall in no way affect or limit the subsequent submission to a referendum, as otherwise provided in section 312 of the Act (7 U.S.C. 1312), of national marketing quotas.

The Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 per centum thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The Act (7 U.S.C. 1313(g)) also provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing * * * farm acreage allotments.

The Act (7 U.S.C. 1313(i)) provides that notwithstanding any other provision of the Act, whenever after investigation the Secretary determines with respect to any kind of tobacco that a substantial difference exists in the usage or market outlets for any one or more of the types comprising such kind of tobacco and that the quantity of tobacco of such type or types to be produced under marketing quotas and acreage allotments established pursuant to this section would not be sufficient to provide an adequate supply for estimated market demands and carryover requirements for such type or types of tobacco, the Secretary shall increase the marketing quotas and acreage allotments for farms producing such type or types of tobacco in the preceding year to the extent necessary to make available a supply of such type or types of tobacco adequate to meet such demands and carryover requirements; the increases in farm marketing quotas and acreage allotments shall be made on the basis of the production of such type or types of tobacco during the period of years considered in establishing farm marketing quotas and acreage allotments for such kind of tobacco; the additional production authorized by section 313(i) shall be in addition to the national marketing quota established pursuant to section 312 of the Act; and the increase in the acreage under section 313(i) shall not be considered in establishing future * * * farm acreage allotments.

The Secretary, may, under section 317 (c) of the Act, in his discretion, offer acreage-poundage quotas on Fire-cured, Dark air-cured, or Virginia sun-cured tobacco for the 1972–73 marketing year if he determines that acreage-poundage quotas would result in more effective marketing quotas than the program on an acreage basis. Should the making of such a determination be considered probable for this kind of tobacco, public hearings will be conducted in the areas where such tobacco is produced for the purpose of ascertaining and taking into consideration the attitudes of producers and other interested persons with respect to acreage-poundage quotas. There is no provision under which acreage-poundage quotas may be offered on Cigar-binder or Cigar-filler and binder tobacco for the 1972–73 marketing year.

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the national marketing quota for each kind of tobacco for the 1972–73 marketing year.

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of same, less reserve of not to exceed 1 percent thereof, among old farms.

3. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. The date(s) or period(s) of the two referenda on quotas for the 1972–73, 1973–74, and 1974–75 marketing years for Cigar-binder (types 51 and 52) and Cigar-filler and binder (types 42–44, 53–55) tobacco, and whether any or all of the referenda should be conducted at polling places rather than by mail ballot (31 F.R. 12011).

5. Whether the Secretary should determine that any one or more of the types comprising a kind of tobacco should be treated as a separate kind of tobacco under section 301(b)(15) of the Act.

6. Whether the Secretary should take any action under section 313(i) of the Act.

7. Whether the Secretary should offer acreage-poundage quotas on any kind or kinds of tobacco.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to the notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)). All submissions must, in order to be sure of consideration, be postmarked not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 1, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-16102 Filed 11-3-71;8:51 am]

Commodity Credit Corporation

[7 CFR Part 1464]

TOBACCO

Advance Grade Rates for Price Support on 1971–Crop

Consideration will be given to data, views and recommendations pertaining to the advance rates set out in this notice which are submitted in writing to the Director, Tobacco Division, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture, Washing, D.C. 20250. All submissions, in order to be sure of consideration, must be received not later than 20 days from the date of publication of this notice in the FEDERAL REGISTER.

Under the Tobacco Loan Program published June 18, 1970 (35 F.R. 1000), and amended June 17, 1971 (36 F.R. 11634, 12509), CCC proposes to establish advance rates by grades for the 1971-crop Ohio filler tobacco, types 42–44, Connecticut Valley broadleaf tobacco, type 51, Connecticut Valley Havana seed tobacco, type 52, New York and Pennsylvania Havana seed tobacco, type 53, and southern Wisconsin tobacco, type 54, northern Wisconsin tobacco, type 55 and Puerto Rican tobacco, type 46, as set forth herein. These proposed rates, calculated to provide the level of support of 49.5 cents per pound for types 51–52, 37.1 cents per pound for type 46 and 35.8 cents per pound for types 42–44, 53–55, as determined under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445), are as follows:

Sec.
1464.22 1971 Crop—Ohio Filler Tobacco, Types 42–44, Advance Schedule.
1464.23 1971 Crop—Connecticut Valley Broadleaf Tobacco, Type 51, Advance Schedule.
1464.24 1971 Crop—Connecticut Valley Havana Seed Tobacco, Type 52, Advance Schedule.
1464.25 1971 Crop—New York and Pennsylvania Havana Seed Tobacco, Type 53, and Southern Wisconsin Tobacco, Type 54, Advance Schedule.
1464.26 1971 Crop—Northern Wisconsin Tobacco, Type 55, Advance Schedule.
1464.27 1971 Crop—Puerto Rican Tobacco, Type 46, Advance Schedule.

AUTHORITY: The provisions of this Part 1464 issued under sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, sec. 125, 70 Stat. 198, 74 Stat. 6; 7 U.S.C. 1441, 1445, 1421, 1423, 7 U.S.C. 1813, 15 U.S.C. 714b, 714c.

§ 1464.22 1971 Crop—Ohio Filler Tobacco, Types 42–44, Advance Schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Crop run (stripped together):	
X1	36.50
X2	33.50
X3	31.00
X4	28.50
Nondescript:	
N	18.50

§ 1464.23 1971 Crop—Connecticut Valley Broadleaf Tobacco, Type 51, Advance Schedule.[2]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Binders:	
B1	71.00
B2	62.00
B3	52.00
B4	43.00
B5	38.00
Non-Binders:	
X1	32.00

§ 1464.24 1971 Crop—Connecticut Valley Havana Seed Tobacco, Type 52, Advance Schedule.[3]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Binders:	
B1	66.00
B2	57.00
B3	49.00
B4	42.00
B5	38.00
Non-Binders:	
X1	32.00

[1] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

[2] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco graded "N1" (first quality nondescript), "N2" (second quality nondescript) or "S" (scrap), or designated "No-G" (no grade).

[3] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco graded "N1" (first quality nondescript), "N2" (second quality nondescript) or "S" (scrap), or designated "No-G" (no grade).

§ 1464.25 1971 Crop—New York and Pennsylvania Havana Seed Tobacco, Type 53, and Southern Wisconsin Tobacco, Type 54, Advance Schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Crop-Run:	
X1	40.50
X2	36.50
X3	29.50
Farm Fillers:	
Y1	27.50
Y2	25.50
Y3	23.50
Nondescript:	
N1	23.50
N2	17.50

§ 1464.26 1971 Crop—Northern Wisconsin Tobacco, Type 55, Advance Schedule.[2]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Binders:	
B1	59.00
B2	54.00
B3	44.00
Strippers:	
C1	41.50
C2	38.00
C3	30.50
Crop-run:	
X1	40.00
X2	36.00
X3	28.00
Farm fillers:	
Y1	32.50
Y2	29.50
Y3	27.50
Nondescript:	
N1	22.50
N2	17.50

§ 1464.27 1971 Crop—Puerto Rican Tobacco, Type 46, Advance Schedule.[3]

(Dollars per hundred pounds, farm sales weight)

Grade	Advance rate
Price Block I (C1F and C1P)	43.00
Price Block II (X1F, X1P and X1S)	36.00
Price Block III (X2T, X2F, X2P and X2S)	25.00
Price Block IV (N)	13.00

[1] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

[2] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

[3] The cooperative associations through which price support is made available to growers are authorized to deduct $1 per hundred pounds from the advances to growers to apply against overhead and handling costs. Tobacco is eligible for advance only if consigned by the original producer. No advance is authorized for tobacco graded "S" (scrap) or designated "No-G" (no grade).

All written submissions received pursuant to this notice will be available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Effective date: Date of filing with Office of Federal Register.

Signed at Washington, D.C., on November 1, 1971.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.71-16103 Filed 11-3-71;8:51 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 11473]

CERTAIN DOWTY ROTOL TYPE PROPELLERS

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Dowty Rotol, Ltd., types (c)R130/4-20-4/12E, (c)R186/4-30-4/16, (c)R187/4-30-4/18, (c)R193/4-30-4/50, (c)R184/4-30-4/50, (c)R259/4-40-4.5/17, (c)R148/4-20-4/21E, (c)R175/4-30-4/13E, (c)R179/4-20-4/33, (c)R257/4-30-4/60, (c)R245/4-40-4.5/13, and (c)R209/4-40-4.5/2 propellers. There have been reports of excessive wear on the teeth of the locking segments for the blade bearing retaining bolts that could cause disengagement of the locking segment and loss of preload and result in the loss of a propeller blade. Since this condition is likely to exist or develop in other propellers of the same type design, the proposed airworthiness directive would require the incorporation of Dowty Rotol, Ltd., Modification No. (c) VP.2676 (Rev. 1) which replaces the locking segments with new segments produced from a fully heat treated material on those Dowty Rotol propeller types covered by this directive.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket

number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before December 6, 1971, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

In consideration of the foregoing, it is proposed to amend § 39.13 of the Federal Aviation Regulations by adding the following new airworthiness directive:

DOWTY ROTOL, LTD. Applies to Dowty Rotol Propeller Types (c)R130/4-20-4/12E, (c)R186/4-30-4/16, (c)R187/4-30-4/18, (c)R193/4-30-4/50, (c)R184/4-30-4/50, (c)R259/4-40-4.5/17, (c)R148/4-20-4/21E, (c)R175/4-30-4/13E, (c)R179/4-20-4/33, (c)R257/4-30-4-60, (c)R245/4-40-4.5/13, and (c)R209/4-40-4.5/2, installed on, but not limited to, BAC Viscount Models 744, 745D, and 810; Armstrong Whitworth Model Argosy AW.650 Series 101; Fairchild and Fokker Models F27 and F227; Handley Page Model Herald; and Grumman Model Gulfstream G-159 airplanes.

Compliance is required as indicated unless already accomplished.

To prevent failure of a propeller blade due to the disengagement of the blade bearing retaining bolts resulting from excessive wear on the teeth of the locking segments, accomplish the following:

Within the next 2,600 hours' time in service or at the next propeller overhaul, after the effective date of this AD, whichever occurs sooner, incorporate Dowty Rotol Modification No. (c) VP.2676 (Rev. 1) in accordance with Dowty Rotol, Ltd., Service Bulletin No. 61-714, Revision 3, dated July 26, 1971, or an FAA-approved equivalent.

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

Issued in Washington, D.C., on October 27, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[FR Doc.71-16109 Filed 11-3-71;8:52 am]

[14 CFR Part 71]

[Airspace Docket No. 71-SO-163]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Chester, S.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Chester transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Chester Municipal Airport (lat. 34°47'18" N., long. 81°11'45" W.).

The proposed designation is required to provide controlled airspace protection for IFR operations at Chester Municipal Airport. A prescribed instrument approach procedure to this airport, utilizing the Fort Mill, S.C. VORTAC, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on October 27, 1971.

ROBERT O. BLANCHARD,
Acting Director, Southern Region.

[FR Doc.71-16110 Filed 11-3-71;8:52 am]

[14 CFR Part 71]

[Airspace Docket No. 71-GL-9]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Gallipolis, Ohio.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Division Chief.

Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Room 18, 3158 Des Plaines Avenue, Des Plaines, IL 60018.

A new instrument approach procedure has been developed for the Gallia-Meigs Airport, Gallipolis, Ohio, utilizing a city-owned NDB and with control to be provided by the Indianapolis Air Route Traffic Control Center. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Gallipolis, Ohio.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (36 F.R. 2140), the following transition area is added:

GALLIPOLIS, OHIO

That airspace extending upward from 700 feet above the surface within an 8½-mile radius of the Gallia-Meigs Regional Airport, Gallipolis, Ohio (latitude 38°50'03" N., longitude 82°09'49" W.).

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Illinois, on October 14, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71-16111 Filed 11-3-71;8:52 am]

Hazardous Materials Regulations Board

[49 CFR Part 195]

[Notice 71-27; Docket No. HM-6D]

PIPELINE LPG TANKS

Testing of Relief Valves

The Hazardous Materials Regulations Board is considering an amendment to § 195.428 that would extend from 6 months to 5 years the interval required of pipeline carriers for testing relief valves on horizontal pressure storage vessels containing liquefied petroleum gas (LPG). The requirement for inspection

of these valves at 6-month intervals would not be changed.

Under the proposed amendment, the frequency of testing relief valves on pipeline LPG tanks would be excepted from paragraph (a) of § 195.428, and a new paragraph (b) would be added to specify the testing interval. As a result of this proposed change, relief valves on pipeline LPG tanks would have to be inspected at 6-month intervals, but tested only once every 5 years.

Extension of the time period for testing appears to be justified for several reasons. First, LPG is a "sweet gas" which has little or no corrosive effect on the metal of the valve. Second, valves are not subjected to temperature variations which could cause a permanent set of the valve springs. Third, industry experience indicates many years of operation at infrequent testing intervals without incident due to improper functioning of relief valves. Finally, in many cases, testing of a valve requires removal of the LPG and depressurization of the tank which exposes the carrier to a potentially hazardous condition that would occur less frequently at longer testing intervals. For these reasons, a 6-month testing interval is an expense for the carrier that does not appear to be warranted by considerations of safety.

If the proposed amendment is adopted, § 195.428 will comport with another departmental regulation, 49 CFR 173.31(c), which requires a 5-year retest of relief valves on tank cars that normally carry LPG.

Interested persons are invited to comment on the proposed amendment by submitting written information, views, or arguments. Communications should be identified by the notice number and docket number and submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590. Comments received by December 5, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons in the Rules Docket at the Office of the Secretary of the Hazardous Materials Regulations Board.

This notice is issued under the authority of sections 831–835 of title 18, United States Code; section 6 (e) (4) and (f) (3) (A) of the Department of Transportation Act, 49 U.S.C. 1655 (e) (4) and (f) (3) (A); and § 1.49(f) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(f).

In consideration of the foregoing, it is proposed to amend § 195.428 of Title 49 of the Code of Federal Regulations to read as follows:

§ 195.428 Overpressure safety devices.

(a) Except as provided in paragraph (b) of this section, each carrier shall, at intervals not exceeding 12 months, or 6 months in the case of pipelines used to carry liquefied gases, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

(b) In the case of relief valves on horizontal pressure storage vessels containing liquefied petroleum gas, each carrier shall test each valve at intervals not exceeding 5 years.

Issued in Washington, D.C., on November 1, 1971.

JOHN W. INGRAM,
Administrator,
Federal Railroad Administration.

[FR Doc.71-16114 Filed 11-3-71;8:51 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 269]

POLICY ON UNIONIZATION AND COLLECTIVE BARGAINING

Objections to Election Procedure

The Board of Governors, pursuant to the authority conferred by section 248 of title 12, United States Code, published in the FEDERAL REGISTER on August 6, 1971 (36 F.R. 14479) a proposal to add a new paragraph (f) to § 269.5.

The purpose of the proposed amendment was stated to be (1) to protect employees from any interference with their making a fair and free choice in selecting or rejecting a bargaining representative even if such interference does not constitute an unfair labor practice within the meaning of § 269.6 and (2) to authorize the Federal Reserve System Labor Relations Panel to establish an expedited procedure for processing charges of interference, to promulgate rules to guide the conduct of all parties, and to provide appropriate remedies when interference has been found to have affected the outcome of the election. Comments on the proposal were to have been received not later than September 7, 1971.

In consideration of the response to the August 6 publication, the Board of Governors has modified its original proposal. The Board believes that offering the modified proposal for public comment will be helpful to its final consideration of this matter. Interested persons are invited to submit relevant data, views, or arguments on the amended proposal. Any such comments or materials should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 18, 1971.

The amended proposal is set forth below:

§ 269.5 Elections.

* * * * *

(f) (1) If at any time prior to an election, an appreciable number of employees of a Federal Reserve bank evidence substantial interest in representation by one or more labor organizations, whether or not a 30 percent interest has yet been shown, it shall be incumbent on the bank, labor organizations, and all others to refrain from any conduct, action or policy that interferes with or restrains employees from making a fair and free choice in selecting or rejecting a bargaining representative.

(2) A bank, labor organizations, or employees are not precluded from exercise of the free speech privileges of § 269.6(c) but such exercise may properly be held to be contrary to the intent of this section even if the conduct, action, or policy in question does not constitute an unfair labor practice under § 269.6(a) (1), (2), or (3) or § 269.6(b) (1) or (2) of this Policy.

(3) The Federal Reserve System Labor Relations Panel may promulgate expedited procedures from prompt disposition of allegations that a violation of this section has affected or is likely to affect the outcome of the election.

(4) The Panel may determine whether there has been a violation of this section and may render appropriate interpretations of this section, and may set forth as guidelines the circumstances the Panel believes necessary for a fair and free election by a Code of Preelection Conduct or by decision in specific cases.

(5) In the event of a proven violation of this section by a bank, by labor organizations, or by other individuals or organizations, found sufficient to affect the outcome of an election, the Panel may take appropriate remedial action such as the setting aside of the results of an election and the ordering of a new election: *Provided, however,* That the Panel may not require a bank to recognize a labor organization without an election unless the violation is found to be an unfair labor practice under § 269.6 that would make a free election unlikely.

By order of the Board of Governors, October 29, 1971.

[SEAL] TYNAN SMITH,
Secretary.

[FR Doc.71-16041 Filed 11-3-71;8:45 am]

[12 CFR Part 291]

LABOR RELATIONS

Preelection and Election Conduct

The Federal Reserve System Labor Relations Panel published in the FEDERAL REGISTER on August 6, 1971 (36 F.R. 14480), a proposed "Code of Preelection Conduct" and "Rules and Regulations Pertaining to Preelection Conduct" to be adopted if the Board of Governors of the Federal Reserve System adopted its proposed new § 269.5(f) of its policy on Unionization and Collective Bargaining for the Federal Reserve banks.

The "Code of Preelection Conduct" would set forth as a matter of policy a general guide to acceptable conduct by a Reserve Bank, a labor organization, or others relating to the selection or rejection by employees of an exclusive bargaining representative.

The need for the issuance of such a guide is premised on the unique approach the Panel contemplates in applying the "objections to election procedure" that would be permitted by the adoption of

the proposed amendment to the Board's policy. Just as the policy reflects approaches from both the private sector and the Federal sector, objections to an election would be viewed according to criteria somewhere between those applied under the National Labor Relations Act and the attitude of strict neutrality applied by Federal executive agencies under Executive Order 11491.

In addition, the proposed rules and regulations pertaining to election conduct would (1) establish an objections to election procedure by which charges of misconduct may be quickly judged and remedies, if appropriate, may be effected, and (2) create procedures for correlating and coordinating such matters with the rules pertaining to unfair labor practices, as set forth in Part 292, rules and regulations pertaining to Charges of Unfair Labor Practices.

As the result of comments received and in view of the Board of Governors' revision of its proposed amendment and resubmission of it for public comment, the Panel has revised the proposed Code and rules and regulations, and hereby presents the revisions for public comment. To aid in the Panel's further consideration of this matter, interested persons are invited to submit relevant data, views, or arguments in writing to the Secretary, Federal Reserve System Labor Relations Panel, 20th Street and Constitution Avenue NW., Washington, D.C. 20551, to be received not later than November 18, 1971.

Both the Code of Preelection Conduct and the rules and regulations pertaining to Preelection Conduct which the Panel now proposes to adopt are set forth below.

By order of the Federal Reserve System Labor Relations Panel, October 28, 1971.

CODE OF PREELECTION CONDUCT

AUTHORITY: This "Code of Preelection Conduct" is issued under § 269.5(f)(4) of the Board of Governors' Policy on Unionization and Collective Bargaining for the Federal Reserve banks, 12 CFR 269.5(f).

Introduction. This is a general guide to acceptable conduct by a bank, by labor organizations, or by others after a substantial interest has been shown by an appreciable number of employees that they may wish to be represented by one or more labor organizations, whether or not a 30 percent interest has yet been shown, and continuing until an election has been held and the results have been announced by the American Arbitration Association.

Nonacceptable conduct by a bank, by labor organizations or by others can result in an unfair labor practice (§ 269.6(a) (1), (2), or (3) or § 269.6(b) (1) or (2) of the Policy on Unionization and Collective Bargaining for the Federal Reserve banks (hereinafter referred to as the "Policy")) or interference in a fair election short of an unfair labor practice (§ 269.5(f)), or both.

This is not intended to be applicable to § 269.5(b) (determination by an Arbitrator under AAA auspices as to whether a 30 percent interest in a labor organization exists in a disputed situation) or to § 269.5(c) (conduct of an election by the AAA) except that prohibited practices are not sanctioned at such times. It is primarily intended to apply to conduct of the parties apart from either of the above noted specific events.

While the Panel realizes that the following proposed guidelines are general in nature, and that detailed applications and interpretations will result only upon consideration of the facts in a specific organizational campaign, it is hoped that these general principles and guidelines will be of assistance to the parties with respect to any preelection activity.

General basis for appraisal. The unfair labor practice provisions of the Policy in conjunction with § 269.6(c) (the so-called free speech provision of the Policy) are intended to be interpreted and applied as respects unfair labor practice charges in essentially the same manner that the National Labor Relations Board (hereinafter referred to as the NLRB) and the courts have applied generally comparable language of the National Labor Relations Act (hereinafter referred to as the NLRA).

However, the interference with a fair election section of the Policy is intended to be interpreted and applied so as to establish standards of preelection conduct consistent with the unique position of Federal Reserve banks within a private sector—public sector spectrum. Rulings by the NLRB under the election provisions of the NLRA (section 9) will provide general guidance for minimum standards of conduct. Greater restraint in the exercise of free speech by a Reserve Bank than may be imposed under the NLRA will be required by reason of the general practice of management neutrality in the public sector. However, a Bank position of strict neutrality will not be required. In short, application of § 269.5(f) will provide a Federal Reserve standard of conduct in between the private sector (NLRA) and Federal executive agencies (Executive Order No. 11491).

In any disputed case, the Federal Reserve System Labor Relations Panel (hereinafter referred to as the "Panel") will appraise the totality of conduct of a party. Necessarily, specific allegations of nonacceptable conduct will need to be examined separately and the various segments then combined to obtain a composite picture. Discussion of some likely facets of a total picture that follow should not lead to undue emphasis on any one aspect of a disputed situation.

Most of the subject matters to be noted hereafter will deal with interference with a free election except that an unfair labor practice might also occur if there is adequate evidence of "threat of reprisal or force, or promise of benefit," in exercise of the free speech provision.

Expression of general point of view. If a bank should prefer to deal with its employees without a labor organization, the bank is not prevented from expression of that opinion. Section 269.6(c) affords the bank that right. Moreover, it may well be that many bank representatives have honest and unbiased opinions about employee welfare that do not envision unionization as an integral or necessary aspect of the employer-employee relationship; the bank should be permitted to convey these views to its employees.

These possible opinions of a bank or of bank representatives, voiced or not voiced, may be reflective of "the bank's best interest," as then appraised by the bank. They have no necessary relevance to an employee's concept of "his own best interest." By adoption of the policy, the Board of Governors and the Reserve banks have assured all employees that a bank will deal fairly and constructively with a labor organization, when and if a majority of the employees who vote in an election chooses to be represented by such an organization.

The basic concept of a free election is that each employee should make his own decision as to what is in his best interest. The NLRB's test of requiring "laboratory conditions" for an election envisions "conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." The revised policy, which restricts banks more than NLRB rules would if they were applicable, does not prevent addition of bank management's general point of view to the various inputs that will assist in framing a decision in each employee's mind. It does prevent the bank from a type of input that is coercive or that inhibits free choice.

If a bank couches its own opinions under an "employee's own best interest" umbrella, it is difficult if not impossible to avoid leaving an inference that the bank would be uncooperative with a labor organization selected by the employees, or that the banks would be less liberal in its general personnel policies, or that it would be futile to select a bargaining agent, or that it would in various ways look with disfavor on those employees who support a labor organization. The likelihood of such inferences, however inadvertent, requires avoidance by a bank of an "employee's own best interest" umbrella. To put the matter more directly, adoption of a "you would be better off without a labor organization" campaign by a bank can be more than an exercise of free speech by the bank since it comes from a source of both potential and actual power over employees.

In judging whether expressions of opinion have inhibited employees' freedom of choice, the totality of conduct will be examined, including the intent and content of the expressed opinion, and the manner in which it was said. Benign intent, per se, will not constitute a defense to an objection that free choice has been impaired since the employee's assessment of the remarks will be deemed to be a critical factor. On the other hand, a bank may make every effort to demonstrate that it is a model employer even though such statement

may raise the inference that the employees have no need for representation by a labor organization.

This is not to say that a bank cannot speak on more specific matters or issues as will be noted hereafter.

Factual statements. A bank may clarify and emphasize its existing wages, benefits, and working conditions and may make comparisons with similar provisions elsewhere. It may also indicate its known expectations for the near future: *Provided,* That such future prediction is factual and is based on considerations having nothing to do with the current threat of unionization.

A labor organization may make similar comparisons with wages, benefits, and working conditions elsewhere and it may outline its hopes and aspirations for the bank employees if it should be recognized. However, it should be particularly careful not to misrepresent the areas now subject to mandatory bargaining.

A bank may comment on subject matters such as a merit system vs. seniority rights, or "flexibility" vs. contractual provisions governing overtime distribution or shift preferences, and other questions that may develop as part of a labor organization's preelection campaign. A bank may clarify the areas not now subject to mandatory bargaining as the bank appraises this matter. However, a bank should not speculate about positions that a labor organization might take in negotiations beyond positions made evident by that organization in its preelection statements.

It is unlikely that either a bank or a labor organization will be completely unbiased in presentation of its position. Neither party is likely to emphasize facts that are negative to its own position.

However, all parties have a strong obligation to adhere to facts and to avoid deception, trickery, or misrepresentation. Attempts to present a particular position in the best possible light will be scrutinized carefully by the panel, with particular and due consideration to be given the materiality of the misstatement, the special knowledge of the individuals who made the misstatement, and the lack of independent knowledge on the part of employees as a factor affecting their ability to properly evaluate any alleged misstatement. In addition, the adequacy of opportunity for effective rebuttal will be taken into account.

Who said it? Appraisal of any exercise of free speech must necessarily give cognizance to its source. All representatives of a bank or of labor organizations, employees, and others may speak or write freely. It is the content of what is said or written that may constitute interference with a fair election. The significance of the content and its probable effect on a fair election may be related to the source.

An oral statement or written document originating from a high-ranking bank official may be more significant than the same thing said or written by a low-ranking supervisor.

Similarly, the source of an oral or written comment on the labor organizations side may be taken into account.

This is not to say that lower ranking individuals of a bank or of a labor organization have license to say or do anything. Responsibility exists for all participants. Moreover, as respects some matters, lower ranking supervision may, in fact, have greater power over employees than higher ranking officials of a bank. In addition, no party can properly undertake through use of lesser ranking individuals a campaign that would be improper if it should originate openly at a higher level in the organization.

Written communications. A bank may send letters or distribute other written communications to employees or post notices so long as such material conforms to the intent of these general guides. A labor organization may similarly communicate with employees.

Upon proper request, a bank should provide adequate bulletin board space for use by a labor organization to post such materials. Decisions of the NLRB will provide guidance to the panel in dealing with problems involved in what constitutes a "proper request," the status of the organization needed to make a request, the difficulties encountered when there are competing labor organizations, the location of the bulletin boards, and rules pertaining thereto, and other similar issues.

Upon proper request, a bank should allow bank employees to distribute campaign materials on bank premises during nonworking hours under conditions that will not interfere with the work of the bank, that are in accord with security regulations, that are validly applied in a nondiscriminatory manner, and are generally consistent with rules pertaining to distribution of the bank's own preelection materials, if any, or with other relevant rules, if any, regarding distribution of other materials.

After a labor organization has proven a 30 percent interest and upon proper request, a bank should furnish with reasonable promptness to responsible officials of the labor organizations on the ballot copies of names and addresses of all bank employees eligible to vote in an election.

Oral solicitation on bank premises. Employees of the bank may engage in prounion or antiunion discussion of the election issues on bank premises during nonworking time, free from discriminatory rules as respects the different types of discussion subject to reasonable rules to protect security and to avoid interference with the work of the bank.

This section does not negate other pertinent provisions of this Code such as "Who said it," "Factual statements," and "Outside interference." Moreover, this section is not intended to provide any exceptions to the traditional prohibitions against interrogation, polling or surveillance, especially with regard to conversations between a supervisor and an individual subject to his supervision.

Scheduled meetings. A bank may schedule a meeting or meetings on bank premises during working hours or nonworking hours, the purpose of such meetings being to communicate orally to employees its facts and positions that may be consistent with these general guides. However, attendance at such meetings shall not be compulsory and no stigma or consequence shall accompany nonattendance of any employee. Most important, the size of the meeting, the location of the meeting, and other relevant circumstances shall assure that no atmosphere of coercion or undue pressure exists.

Normally, a labor organization has its own meeting place or places and it is probable that a labor organization will not want or need to hold meetings on bank premises. A labor organization would have no right to hold meetings on bank premises in the absence of bank meetings noted in the preceding paragraph. However, if a bank exercises its rights to conduct such meetings and if it can be shown that one or more labor organizations involved in an upcoming election would be seriously disadvantaged in its efforts to reply to such a bank meeting in the absence of authorized use of bank premises, the bank should allow such labor organization or organizations to use bank facilities for a meeting or meetings to be addressed by officials of the organization during nonworking hours immediately following or preceding working hours. Attendance at such meetings would be noncompulsory and the general tone and atmosphere should be similar to that noted for a bank meeting.

24-hour and 12-hour rules. No meetings of either type discussed in the foregoing section should be held within a 24-hour period immediately prior to the scheduled time for casting the first ballot.

Moreover, to afford the most favorable atmosphere for a free election, there should be no distribution of new literature, bank or labor organization in nature, on or immediately adjacent to bank premises within the 12 hours prior to the scheduled time for balloting to begin.

Racial overtones. Neither a bank nor a labor organization may, under an asserted right of free speech, utilize a mode of expression that would imply racial discrimination or incite racial feelings or prejudices.

Outside interference. Activities of third parties or of individuals, not attributable to either a bank or a labor organization involved in the election, that are violative of these general guides may be grounds for setting aside an election if such activities can properly be considered as having had a material effect on the outcome of the election. Such conduct or activities that would otherwise be violative of these provisions may nevertheless not be grounds for setting aside an election if the party or parties that appear to have been aided thereby effectively refute such conduct or activity.

PART 291—RULES AND REGULATIONS PERTAINING TO PREELECTION CONDUCT

Sec.
291.100 Filing of objections.
291.200 Answer.
291.300 Investigation and hearing.
291.400 Exceptions.
291.500 Decision of the Panel.
291.600 Relationship to unfair labor practice procedure.
291.700 Objections to conduct of the election.

AUTHORITY: The provisions of this Part 291 are issued under § 269.5(f)(3) of the Board of Governors' policy on unionization and collective bargaining for the Federal Reserve banks, 12 CFR 269.5(f).

§ 291.100 Filing of objections.

(a) Within 5 days after the tally of the ballots has been furnished, any party involved in the election may file with the secretary of the panel an original and five copies of objections to conduct affecting the results of the election, pursuant to § 269.5 of the policy in this chapter.

(b) Such objections shall contain a specific statement of the reasons therefor and evidence in support thereof.

(c) Any filing must be timely whether or not challenged ballots are sufficient in number to affect the results of the election.

(d) The party filing objections shall immediately serve copies of the objections on the other parties and shall submit proof of service thereof to the secretary of the panel.

§ 291.200 Answer.

(a) An answer, containing a complete but concise statement of facts refuting the objections, may be filed with the secretary of the panel within 5 days from service of the objections.

(b) The original and five copies of the answer, together with proof of service, shall be filed with the panel and one copy of the answer shall be served on each party.

§ 291.300 Investigation and hearing.

(a) Within 5 days after the answer to objections has been filed, the panel may refer the matter to the National Center for Dispute Settlement of the American Arbitration Association (hereinafter the Center) with direction to conduct an investigation or hearing or both. If there is no issue of fact the panel may rule on the basis of the pleadings.

(b) If no answer has been timely filed, the panel may deem such failure to be an admission to the objections filed and may render a decision thereupon or may direct the Center to conduct an investigation or hearing or both.

(c) Under exceptional circumstances, the panel may order a hearing to be held without investigation and may conduct the hearing rather than referring it to the Center. In such event, the order for hearing shall set forth the exceptional circumstances.

(d) A recommendation by the Center, based on an administrative investigation, that a hearing should not be held is subject to exceptions on the same basis as a hearing officer report (§ 291.400).

(e) A determination by the Center that a hearing should be held is not subject to appeal to the panel.

(f) Any hearing pursuant to this section shall be conducted on an informal basis and all measures compatible with justice and equity shall be employed to bring the matter speedily to hearing, to hear the parties and to render a decision. The rules pertaining to the hearing shall be the same as those applicable to hearings under Part 292 of this chapter (Charges of Unfair Labor Practices) insofar as they may be applicable under such circumstances and except as otherwise provided in this part, and shall be subject to such time limits as the hearing officer may establish: *Provided, however,* That the hearing officer's recommendation shall be transmitted to the panel within 10 working days after his receipt of the official transcript of the hearing.

(g) The objecting party shall bear the burden of proof regarding all matters alleged in its objections to conduct affecting the results of the election.

(h) Matters discovered during investigation or hearing, although not specifically alleged as objections, may nevertheless be considered as grounds for setting aside an election: *Provided, however,* That all parties have been notified of such matters and been given an adequate opportunity to present evidence relating to such matters.

§ 291.400 Exceptions.

(a) If the hearing is conducted by the panel its decision shall be final and binding on the parties.

(b) If the hearing is conducted by the Center, any party may file with the panel exceptions to the hearing officer's report within 10 days from service of that report upon the party.

(c) The original and five copies of the exceptions, together with proof of the service thereof, shall be filed with the panel, and one copy of the exceptions shall be served on each party.

(d) If no exceptions are filed, the decision of the Center shall be final and binding upon the parties.

(e) Answering briefs to exceptions or briefs in support of the hearing officer shall be accepted only under such conditions and time limitations as the panel may establish.

(f) Requests for extensions of time shall be granted only under extraordinary circumstances.

§ 291.500 Decision of the panel.

(a) If no objections are filed within the time set forth above, the panel shall notify the American Arbitration Association (hereinafter the AAA) that it may issue to the parties a certification of the results of the election, including certification of representative, where appropriate, subject to the resolution of any other election disputes which would be pending before other tribunals pursuant to § 269.5 of the policy in this chapter.

(b) The panel shall similarly notify the AAA if it finds, or if the Center finds and no exceptions are timely filed, that there was not conduct sufficient to affect the outcome of the election.

(c) If the panel finds, or if the Center finds and no exceptions are timely filed, that there was conduct which interfered with the free and fair choice by the employees, the panel shall take such action as may be appropriate under § 269.5 (f)(5) of this chapter. If the election is set aside and if a new election is held, and if the parties are the same as for the prior election, it shall be held under the auspices of the AAA and the labor organization or organizations previously on the ballot shall not be required to make a new showing of interest and no additional intervenors shall be permitted on the ballot.

§ 291.600 Relationship to unfair labor practice procedure.

(a) The panel may treat any unfair labor practice charges as objections and may process such objections under the procedures set forth herein if such charges have met the 5-day filing requirement for objections as set forth in § 291.100.

(b) If a party files both objections to an election and unfair labor practice charges arising out of the same circumstances, the panel may consolidate the matter and deal with both aspects under the unfair labor practice procedure, even though separate findings may ultimately be made.

(c) Where appropriate, the panel may sever an unfair labor practice charge and, utilizing the procedure set forth in this part, process that portion of the charge that would constitute objections to conduct affecting the results of an election.

(d) The panel shall provide timely notice to all parties in interest when action has been taken pursuant to paragraphs (a), (b), and (c) of this section.

§ 291.700 Computation of time for filing papers.

(a) In computing time for the filing of papers pursuant to the requirements of this part, there shall be excluded from such computations Saturdays, Sundays, Federal, and bank holidays.

(b) The postmark date on any letter or document shall be construed as the date of filing.

§ 291.800 Objections to conduct of election.

Objections to the conduct of the election, as distinguished from conduct affecting the results of the election, shall not be resolved by the panel, but shall be resolved by the AAA in accordance with its election rules or in accordance with such election agreement as may be applicable to that election. Decisions rendered by the AAA or by other tribunals consented to in an election agreement, shall not be subject to appeal to the panel.

[FR Doc.71-16042 Filed 11-3-71;8:45 am]

SELECTIVE SERVICE SYSTEM

Office of the Director

[32 CFR Parts 1600, 1604, 1606, 1609, 1613, 1617, 1619, 1621]

OFFICERS AND EMPLOYEES, REGISTRATION, CANCELLATION, AND CLASSIFICATION

Notice of Proposed Rule Making

Pursuant to the Military Selective Service Act, as amended (50 U.S.C. App., sec. 451 et seq.), and § 1604.1 of Selective Service Regulations (32 CFR 1604.1), the Director of Selective Service hereby gives public notice that consideration is being given to the following proposed amendments to the Selective Service Regulations constituting a portion of Chapter XVI of the Code of Federal Regulations. These Regulations implement the Military Selective Service Act, as amended (50 U.S.C. App., sec. 451 et seq.).

All persons who desire to submit views to the Director on the proposals should prepare them in writing and mail them to the Deputy General Counsel, National Headquarters, Selective Service System, 1724 F Street NW., Washington, DC 20435, within 30 days following the publication of this notice in the FEDERAL REGISTER.

The proposed amendments follow:

PART 1600—MAINTENANCE OF HIGH ETHICAL AND MORAL STANDARDS OF CONDUCT BY OFFICERS AND EMPLOYEES OF THE SELECTIVE SERVICE SYSTEM

Section 1600.735–28 is amended to read as follows:

§ 1600.735–28 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

PART 1604—SELECTIVE SERVICE OFFICERS

Paragraph (a) of § 1604.55 *Disqualification* is amended to read as follows:

§ 1604.55 Disqualification.

(a) No member of a local board shall act on his own case or on the case of a registrant who is his first cousin or closer relation, either by blood, marriage, or adoption, or who is an employee or employer, or who is a fellow employee, or stands in the relation of superior or subordinate in connection with any employment, or is a partner or close business associate of the member. If because of this provision a majority of a local board cannot act on the case of a registrant, the local board shall request the State Director of Selective Service to designate another local board to which the registrant shall be transferred for action on his case.

* * * * *

PART 1606—GENERAL ADMINISTRATION

Section 1606.41 *Forwarding mail addressed to a registrant* is amended to read as follows:

§ 1606.41 Addresses of registrants.

The addresses of registrants are confidential information.

PART 1609—EXPENDITURES OTHER THAN FOR PERSONAL SERVICES

Paragraph (a) (2) of § 1609.41 *Travel: authorization* is amended to read as follows:

§ 1609.41 Travel: Authorization.

(a) * * *

(2) The State Director of Selective Service, for the travel of the personnel of the Selective Service System of his State to any point within the boundaries of his State, unless travel beyond such boundaries is required in answer to a subpoena issued by the U.S. District Court, or has been authorized by the Director of Selective Service.

* * * * *

PART 1613—REGISTRATION PROCEDURES

§ 1613.43(a) [Revoked]

Section 1613.43(a) *Preparation and mailing of registration certificate* is revoked.

§ 1613.44 [Revoked]

Section 1613.44 *Person registered more than once* is revoked.

PART 1617—REGISTRATION CERTIFICATE

Section 1617.2 is added to read as follows:

§ 1617.2 Effect of date of birth that appears on Registration Card (SSS Form 1).

The date of birth of the registrant that appears on his Registration Card (SSS Form 1) on the day before the lottery is conducted to establish his random selective sequence will be conclusive as to his date of birth in all matters pertaining to his relations with the Selective Service System.

Section 1617.11 is amended to read as follows:

§ 1617.11 Issuing of duplicate registration certificate.

A duplicate Registration Certificate (SSS Form 2) shall be issued to a registrant by the local board with which he is registered upon receipt of his request therefor made by letter or on a Request for Duplicate Registration Certificate or Notice of Classification (SSS Form 6) and the presentation of satisfactory proof to the local board that the Registration Certificate (SSS Form 2) of the registrant has been lost, destroyed, mislaid, or stolen.

§ 1617.12 [Revoked]

Section 1617.12 *Action by local boards when request for duplicate registration certificate is filed* is revoked.

PART 1619—CANCELLATION OF REGISTRATION

Part 1619 is amended to read:

§ 1619.1 Cancellation of registration by local board.

The local board many cancel the registration of a person who has improperly registered at a time when he was exempt from registration and there has been no subsequent change in his status which would render him liable for registration, except the local board will not cancel the registration of any registrant who is 17 years of age and has volunteered for induction with the written consent of his parents or guardian, or, if such a registrant has been inducted into and remains in the Armed Forces as the result of his premature registration, while he remains in the Armed Forces.

§ 1619.2 When cancellation authorized by director of Selective Service.

The Director of Selective Service may authorize or direct the cancellation by a local board of the registration of any particular registrant or of a registrant who comes within a specified group of registrants. Whenever the Director of Selective Service authorizes or directs the cancellation of the registration of any particular registrant or of a registrant within a specified group of registrants, the local board shall cancel the registration and shall take such other action as the Director of Selective Service may prescribe.

PART 1621—PREPARATION FOR CLASSIFICATION

Paragraph (e) of § 1621.2 *Selective service number* is revised to read as follows:

§ 1621.2 Selective service number.

* * * * *

(e) The fourth element of the selective service number shall be the number assigned to the registrant by his local board among the other registrants of the local board having the same year of birth. Every local board shall assign each

of its registrants who were born in the same year a specific identifying number in numerical sequence beginning with the numeral 1. A separate series of identification numbers shall be so assigned to registrants of each year of birth. Identification numbers shall be assigned to registrants by a method most convenient to the person assigning them, provided that each time a number is assigned the next number in sequence for a given year of birth is used.

§§ 1621.4, 1621.5, 1621.6, 1621.7, and 1621.8 [Revoked]

Section 1621.4 *Placing selective service numbers on registration cards and certificates* is revoked.

Section 1621.5 *Preparation of List of Registrants (SSS Form 3)* is revoked.

Section 1621.6 *Classification Record (SSS Form 102)* is revoked.

Section 1621.7 *Final arangements of registration cards* is revoked.

Section 1621.8 *Preparation of Cover Sheets (SSS Form 101)* is revoked.

CURTIS W. TARR,
Director.

NOVEMBER 2, 1971.

[FR Doc.71-16198 Filed 11-3-71;8:55 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ARIZONA

Notice of Filing of Plats of Survey

OCTOBER 28, 1971.

Supplemental plats of survey of the lands described below will be officially filed in the Arizona State Office, Phoenix, Ariz., effective at 10 a.m., December 2, 1971:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 3 N., R. 3 W.,
Tract 37, containing 16,531.85 acres.
T. 1 S., R. 1 W.,
Tract 37, containing 9,608.55 acres.

The above plats were prepared to provide for the conveyance of land to Maricopa County, Ariz., for recreational purposes under the provision of the Recreation and Public Purposes Act of 1926 as amended by Public Law 91-459 approved October 16, 1970.

HELEN E. EDGAR,
Acting Chief, Branch of Records and Data Management.

[FR Doc.71-16119 Filed 11-3-71;8:51 am]

National Park Service

[Order 66]

DIRECTORS OF NATIONAL PARK SERVICE REGIONS

Delegation of Authority

The delegation of authority to the Directors of the National Park Service Regions, published in the FEDERAL REGISTER at 36 F.R. 13802, is hereby revised as set forth below.

SECTION 1. *Delegation.* The Directors of National Park Service Regions, in the administration, operation, and development of areas and offices under their supervision, are authorized to exercise all the authority now or hereafter vested in the Director, National Park Service, except with respect to the following:

(1) Authority to approve changes in policies and to establish new policies.

(2) Authority for final approval of Servicewide or regionwide program and financial plans for construction, professional services, land acquisition, park operations, and other programs.

(3) Authority for final approval of the location of new roads.

(4) Authority to perform the responsibilities set forth in title I and section 205(a) of title II of the Historic Preservation Act of October 15, 1966 (80 Stat. 915), as amended.

(5) Authority to perform the responsibilities with respect to historic preservation set forth in section 4(f) of the Department of Transportation Act of October 15, 1966 (80 Stat. 931), as amended.

(6) Authority to initiate investigations of areas suggested or proposed for inclusion in the National Park System and sites under consideration for National Landmark status.

(7) Authority to determine whether any surplus building proposed by the Administrator of the General Services Administration to be demolished is a historic building of national significance within the meaning of the Act of August 21, 1935 (49 Stat. 666), as amended.

(8) Authority to execute concessions contracts and over all matters which fall within the functions of the Office of Concessions Management, Washington office, and for executing, amending, assigning and terminating concessions permits in excess of 5 years duration or when anticipated annual gross receipts will amount to $100,000 or more.

(9) Authority to issue general travel authorizations as defined in 347 DM .2.2C.

(10) Authority to approve the payment of actual subsistence expenses for travel.

(11) Authority to approve attendance at meetings of societies and associations.

(12) Authority to approve acceptance of payment of travel, subsistence and other expenses incident to attendance at meetings by an organization which is tax exempt.

(13) Authority with respect to making and enforcing rules and regulations for the Government, conduct, and discipline of the U.S. Park Police, under the Act of October 11, 1962 (76 Stat. 907).

(14) Authority to make certifications required in connection with reports made to the Secretary on each appropriation or fund under National Park Service control.

(15) Authority to approve Standard Form 1151, Nonexpenditure Transfer Authorization, in connection with internal transfer of funds.

(16) Authority to conduct archeological investigations and salvage activities.

(17) Authority to approve the use of a Government-owned or leased motor vehicle between domicile and place of employment.

(18) Authority to approve payment of dues for library memberships in societies or associations.

(19) Authority to approve rates for quarters and related services.

(20) Authority over those matters for which specific authority is delegated in internal management directives and unpublished delegations of authority arising in the Washington office.

SEC. 2. *Redelegation.* Except as to master plan approval authority, the Directors of the regions may, in writing redelegate to their officers and employees the authority delegated in this order, and may authorize written redelegations of such authority; except that in the regional offices, procurement and contracting authority may only be redelegated to the Chief, Division of Property Management and General Services and the Chief, Office of Administrative Management. Authority to contract for supplies, equipment, and services may be redelegated by the Directors to Superintendents as follows: Superintendents, Grade GS-12 and below not to exceed $2,000; Superintendents, Grade GS-13 not to exceed $50,000; Superintendents, Grade GS-14 not to exceed $100,000; Superintendents, Grade GS-15 not to exceed $200,000. Authority to contract for acquisition of lands and related property, and options related thereto, may be delegated to the chief land acquisition officer in the regional office and field land acquisition officers. Each redelegation shall be published in the FEDERAL REGISTER.

(205 DM, as amended; 245 DM, as amended; sec. 2 of Reorganization Plan No. 3 of 1950)

Dated: October 29, 1971.

RAYMOND L. FREEMAN,
Acting Director, National Park Service.

[FR Doc.71-16072 Filed 11-3-71;8:48 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

[Dept. Organization Order 20-2]

OFFICE OF AUDITS

Functions and Organization

This material supersedes the material appearing at 35 F.R. 4976 of March 21, 1970.

SECTION 1. *Purpose.* This order prescribes the functions and organization of the Office of Audits.

SEC. 2. *Status and line of authority.* The Office of Audits, a Departmental office, shall be headed by a Director of Audits, who shall report and be responsible to the Assistant Secretary for Administration.

SEC. 3. *Functions.* .01 Pursuant to the authority vested in the Assistant Secretary for Administration by Department Organization Order 10-5, and subject to such policies and directives as the Assistant Secretary for Administration may prescribe, the Office shall conduct audits of all organizational units of the Department except as the Assistant Secretary for Administration may otherwise determine with respect to particular auditing tasks for designated organizational units. The audits may encompass the operating, administrative, and financial activities of units, or concern selected claims, cost, cost proposals, and cost and pricing data arising from contracts, grants, subsidies,

loans, or other similar agreements entered into, or proposed by, organizational units.

.02 The Director of Audits shall be the adviser to, and serve as the representative of, the Assistant Secretary for Administration on all internal and external audit matters of the Department, and shall serve as adviser to other departmental officials with respect to these matters. He shall represent the Department in conferences and negotiations with officials of other Federal agencies or other groups with respect to audit matters.

SEC. 4. *Specified authority.* In addition to the authority implicit in and essential to carrying out the functions assigned the Office, the Director of Audits is expressly delegated the authority to arrange with other Federal, State, and local agencies, and other organizations, to make external audits.

SEC. 5. *Organization.* Under the direction and supervision of the Director, the functions of the Office shall be organized and carried out as provided below:

.01 The Deputy Director of Audits shall be the chief operating aide to the Director of Audits on Substantive audit matters and shall be responsible for managing the audit staff. In consultation and cooperation with the Office of Personnel, he shall be responsible to the Director of Audits for obtaining a high quality professional staff, for developing and prescribing programs designed to further the career development of individual staff members, and for obtaining appropriate recognition of the professional character of the work done by members of the audit staff. He shall perform such other duties and assignments as the Director of Audits may prescribe. He shall also perform the functions of the Director in the latter's absence.

.02 The Audit Policy Staff shall develop Department-wide policies, procedures, and standards for planning, programing, executing, and reporting on all audits. It shall coordinate, review and revise, as appropriate, individual audit programs, and annual and 5-year audit plans prepared by the operating divisions in the Office; maintain surveillance, through reports and conferences, over audits in process to determine compliance with approved plans and programs; postreview selected audits in detail as a quality control; review, reference, edit, and process audit reports; maintain followup on audit findings and recommendations; coordinate responses to and comments on General Accounting Office reports; and carry out such other duties and assignments as the Director of Audits may prescribe.

.03 The Contract, Grant, Loan, and Subsidy Audit Division shall carry out, or arrange for, site audits of documentation in support of claims, costs, cost proposals, and cost and pricing data arising from selected contracts, grants, subsidies, loans, and other similar agreements, entered into or proposed by organizational units. It shall carry out or arrange for site audits of contracts, grant, or similar agreements, or proposals thereto, as requested by the Department officials and agreed to by the Director of Audits. It shall make any necessary arrangements with other Federal, State, and local agencies, or with any other organizations, for the performance of audits of such contracts, grants or other agreements, on a reimbursable or other basis, and shall prescribe the scope of such audits and maintain liaison with the auditing agency or organization.

.04 The Fiscal and Special Internal Audit Division shall carry out audits of the fiscal activities of the operating units and Departmental offices including payroll, travel, property, cash funds, other accounting records and controls, and financial and statistical statements and reports. It shall participate in formulating Departmental accounting principles, standards, and procedures as suggested by audit findings, and shall carry out such special audits and examinations as may be requested by Secretarial Officers and other officials, and agreed to by the Director of Audits or the Assistant Secretary for Administration.

.05 The three Internal Audit Divisions shall carry out, on a cyclical basis, comprehensive audits of the operating, administrative, and financial activities of organizational units. Each Audit Division is assigned, as specified below, a group of organizations of the Department which normally it will audit:

Division	*Organizations to Audit*
Internal Audit Division 1.	National Bureau of Standards. National Oceanic and Atmospheric Administration. National Technical Information Service. Office of Telecommunications. Patent Office.
Internal Audit Division 2.	Bureau of the Census. Bureau of Domestic Commerce. Bureau of International Commerce. Maritime Administration. Office of Business Economics. Office of Foreign Direct Investments. Office of Import Programs. Office of Textiles. U.S. Travel Service.
Internal Audit Division 3.	Economic Development Administration. Office of Minority Business Enterprise. Office of the Secretary.

Effective date: October 12, 1971.

LARRY A. JOBE,
Assistant Secretary for Administration.

[FR Doc.71-16067 Filed 11-3-71;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

BUCKMAN LABORATORIES, INC.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2B2731) has been filed by Buckman Laboratories, Inc., Memphis, Tenn. 38108, proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.-2526) be amended to provide for the safe use of poly[oxyethylene(dimethylimino)ethylene(dimethylimino)ethylene dichloride], to which has been grafted polyacrylic acid by 2-hydroxypropylene bridges, as a component of paper and paperboard in contact with aqueous and fatty foods.

Dated: October 22, 1971.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.71-16121 Filed 11-3-71;8:51 am]

[Docket No. FDC-D-389; NADA No. 6-993V]

GREEVER'S INC.

Greever's Phenothiazine and Lead Arsenate Drench Powder; Notice of Opportunity for a Hearing

In an announcement in the FEDERAL REGISTER of December 9, 1970 (35 F.R. 18688), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Greever's Phenothiazine and Lead Arsenate Drench Powder, NADA (new animal drug application) No. 6-993V. The announcement invited the holder of said NADA, Greever's Inc., Chilhowie, Va. 24319, and any other interested persons to submit pertinent data on the drug's effectiveness.

No data were received in response to the announcement and available information fails to provide substantial evidence that the drug is effective for the removal of tapeworms, nodular worms, hookworms, large and small stomach worms, bankrupt worms, and large-mouth bowelworms from sheep and goats.

Therefore, notice is given to Greever's Inc. and to any other interested person who may be adversely affected, that the Commissioner proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) withdrawing approval of NADA No. 6-993V and all amendments and supplements thereto.

This action is proposed on the grounds that there is a lack of substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

In accordance with the provision of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicant and any other interested person who would be adversely affected by an order withdrawing such approval an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of NADA No. 6-993V should not be withdrawn. Promulgation of the order will cause any drugs similar in composition to the above cited drug product and recommended for similar conditions of use to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market will be subject to appropriate regulatory action.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing. If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner, without further notice, will enter a final order withdrawing approval of the new animal drug application.

Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process which the Commissioner finds is entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the grounds for this notice. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence. The time shall be not more than 90 days after the expiration of said 30 days, unless the hearing examiner and the applicant otherwise agree.

Responses to this notice will be available for public inspection in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 22, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-16124 Filed 11-3-71;8:52 am]

[Docket No. FDC-D-395; NADA No. 5-733V]

HESS & CLARK

Sulfathiazole-Kaolin-Pectin for Calf Scours; Notice of Opportunity for a Hearing

In an announcement in the FEDERAL REGISTER of August 18, 1970 (35 F.R. 13161, DESI 5733V), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on SKP for Calf Scours, NADA (new animal drug application) No. 5-733V, a product containing sulfathiazole, pectin, kaolin, and ox bile marketed by Hess & Clark, division of Rhodia, Inc. (formerly a division of Richardson-Merrell, Inc.), Ashland, Ohio 44805.

The announcement invited the holder of said new animal drug application and any other interested persons to submit pertinent data on the drug's effectiveness.

No data were received in response to the announcement and available information fails to provide substantial evidence that the drug as a liquid suspension is effective for use in the treatment of calf scours.

Therefore, notice is given to Hess & Clark and to any other interested person who may be adversely affected that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of NADA No. 5-733V and all amendments and supplements thereto. This action is proposed on the grounds that there is a lack of substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner hereby gives the applicant and any interested persons who would be adversely affected by an order withdrawing such approval an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of NADA No. 5-733V should not be withdrawn. Promulgation of the order will cause any drug similar in composition to the above-cited drug product and recommended for similar conditions of use to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market would be subject to appropriate regulatory action.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Food, Drug, and Environmental Health Division, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852 a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner, without further notice, will enter a final order withdrawing approval of the new animal drug application. Failure of such persons to file a written appearance of election within 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing concerning a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the grounds for this notice of opportunity for a hearing. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact requiring a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time

and place at which the hearing will commence. The time shall not be more than 90 days after the expiration of said 30 days, unless the hearing examiner and the applicant otherwise agree.

Responses to this notice will be available for public inspection in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 22, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-16125 Filed 11-3-71;8:52 am]

[FDC-D-388]

PHILIPS ROXANE, INC.

Certain Drug Products Intended for Use in Treating Diarrhea; Notice of Drugs Deemed Adulterated

An announcement concerning the following drugs manufactured by Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, Mo. 64502, was published in the FEDERAL REGISTER of August 22, 1970 (35 F.R. 13484, DESI 0044NV):

1. Calf Scour Bolus (Anchor Serum Co.);
2. Neo-Scour Plus Bolus (Bio-Ceutic Laboratories);
3. Skourstop, Calf Scour Bolus (United Co-Operatives, Inc.);
4. Calf Scour Extra (United Co-Operatives, Inc.);
5. Calf Scour Formula (Anchor Serum);
6. Homycin (Bio-Ceutic Laboratories);
7. Pets' Best, Neo-Sorb Tablets (Pets' Best);
8. Temtabs with Pharmasorb (Bio-Ceutic Laboratories);
9. Pets' Best, Neo-Sorb Liquid (Pets' Best);
10. Litter-Mate with Neomycin (Anchor Serum Co.);
11. Master-Mix, Litter-Mate with Neomycin (Central Soya); and
12. Scour Aid with Neomycin (Bio-Ceutic Laboratories).

The announcement set forth the findings of the Food and Drug Administration following review of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, that the above-listed products are probably not effective for: (1) The prevention or treatment of baby pig scours; (2) treatment of pneumo-enteritis complex in swine; or (3) as an aid in the treatment of infectious and non-infectious diarrhea (scours) of calves, colts, cats, and dogs.

Said announcement provided the manufacturer and all interested persons a 6-month period in which to submit new animal drug applications. Philips Roxane, Inc., did not submit new animal drug applications for the above-listed products within the 6-month period provided.

Based on the foregoing and the information before him, the Commissioner of Food and Drugs concludes that the above-named drugs are adulterated within the meaning of section 501(a)(5) of the Federal Food, Drug, and Cosmetic Act in that they are not the subject of approved new animal drug applications pursuant to section 512 of the act. Therefore, notice is given to Philips Roxane, Inc., and all interested persons that all stocks of said drugs within the jurisdiction of the act are deemed adulterated within the meaning of the act and are subject to appropriate regulatory action.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501(a)(5), 512, 52 Stat. 1049, as amended, 82 Stat. 343–351; 21 U.S.C. 351(a)(5), 360(b)) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 22, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-16122 Filed 11-3-71;8:51 am]

[FDC-D-392]

PHILIPS ROXANE, INC.

Hydrocortisone Acetate-Neomycin Sulfate-Tetracaine Ointment; Notice of Drugs Deemed Adulterated

An announcement concerning Neo-Cort (ophthalmic ointment) and Pets' Best Cort-I-Mycin (eye and ear ointment) by Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, Mo. 64502 was published in the FEDERAL REGISTER of August 21, 1970 (35 F.R. 13401, DESI 12-12NV). The announcement set forth the findings of the Food and Drug Administration following review of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, that these products are probably not effective for veterinary use as an aid in the treatment of keratitis, conjunctivitis, and otitis externa.

Said announcement provided the manufacturer and all interested persons a 6-month period in which to submit new animal drug applications. Philips Roxane, Inc., did not submit new animal drug applications for the above-listed products within the 6-month period provided. In their response to the announcement, the manufacturer stated that these drugs were no longer made.

Based on the foregoing and all information before him, the Commissioner of Food and Drugs concludes that the above-named drugs are adulterated within the meaning of section 501(a)(5) of the Federal Food, Drug, and Cosmetic Act in that they are not the subject of approved new animal drug applications pursuant to section 512 of the act. Therefore, notice is given to Philips Roxane, Inc., and all interested persons that all stocks of said drugs within the jurisdiction of the act are deemed adulterated within the meaning of the act, and are subject to appropriate regulatory action.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501(a)(5), 512, 52 Stat. 1049, as amended, 82 Stat. 343–351; 21 U.S.C. 351(a)(5), 360b) and under the authority delegated to the Commissioner (CFR 2.120).

Dated: October 22, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-16123 Filed 11-3-71;8:52 am]

Office of Education

VOCATIONAL EDUCATION ACT GRANTS

Allotment Ratios

Pursuant to section 103(d)(2) of the Vocational Education Act of 1963, as amended (20 U.S.C. 1243), the following allotment ratios were computed for the purpose of making grants under parts B and C of title I of the Act to each of the States, the District of Columbia, American Samoa, Guam, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, and are hereby promulgated for the fiscal year ending June 30, 1973:

Alabama	.6000
Alaska	.4227
Arizona	.5517
Arkansas	.6000
California	.4300
Colorado	.5222
Connecticut	.4000
Delaware	.4430
Florida	.5431
Georgia	.5777
Hawaii	.4401
Idaho	.5944
Illinois	.4232
Indiana	.5084
Iowa	.5260
Kansas	.5098
Kentucky	.6000
Louisiana	.6000
Maine	.5899
Maryland	.4614
Massachusetts	.4489
Michigan	.4683
Minnesota	.5151
Mississippi	.6000
Missouri	.5267
Montana	.5739
Nebraska	.5240
Nevada	.4261
New Hampshire	.5358
New Jersey	.4169
New Mexico	.6000
New York	.4000
North Carolina	.5961
North Dakota	.6000
Ohio	.4889
Oklahoma	.5807
Oregon	.5221
Pennsylvania	.5022
Rhode Island	.4948
South Carolina	.6000
South Dakota	.5940
Tennessee	.6000
Texas	.5523
Utah	.5936
Vermont	.5583
Virginia	.5454
Washington	.4744
West Virginia	.6000

Wisconsin	.5273
Wyoming	.5504
District of Columbia	.4000
American Samoa	.6000
Guam	.6000
Puerto Rico	.6000
Trust Territory of the Pacific Islands	.6000
Virgin Islands	.6000

Dated: October 27, 1971.

S. P. MARLAND, Jr.,
Commissioner of Education.

[FR Doc.71-16066 Filed 11-3-71;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FOURTH ANNUAL NATIONAL AVIATION SYSTEM PLANNING REVIEW CONFERENCE

The purpose of this notice is to announce the Fourth Annual National Aviation System Planning Review Conference. (The establishment of annual consultative planning procedures was originally documented and publicized in 33 F.R. 19205, dated December 24, 1968, and 35 F.R. 17798, dated November 19, 1970.)

The Department of Transportation announces that the Fourth Annual National Aviation System Planning Review Conference will be held May 1-3, 1972, at the Twin Bridges' Marriott Hotel, Washington, D.C.

The Department of Transportation invites suggestions and comments as to topics and issues for the agenda for the conference. The Department also invites the submission of papers on issue topics or other comments related to the conference. Suggested topics and issues should be properly explained and documented in order to be considered for the agenda. All suggested agenda topics and abstracts of papers should be submitted not later than 6 December 1971 to:

Associate Administrator for Plans, Attention: AV-1, 800 Independence Avenue SW., Washington, D.C. 20591.

If an abstract only is submitted then the final complete paper must be submitted to the FAA not later than February 1, 1972.

A list of tentative issues and topics is provided for use as guidance in preparation of papers or comments:

(1) Human factors and Biomedical factors in aviation;
(2) Optimization of airspace;
(3) National Aviation System of the Future, i.e., Collision Avoidance System/ Proximity Warning Indicator, Role of Primary/ Secondary Radar; Digital Communications;
(4) Airport Development Assistance Program, i.e., Government/State/Municipal role;
(5) Aviation Trust Fund;
(6) Balanced transportation;
(7) New technology;
(9) Environmental factors affecting aviation.

Registration is open to any one interested in attending the conference. A registration fee of $5 is required of those who wish to receive all conference documents, papers, agenda and the 1972 editions of the National Aviation System Policy Summary and 10 Year Plan (Those persons who do not register may purchase the National Aviation System Policy Summary and 10 Year Plan directly from the Government Printing Office).

To register for the Fourth Annual National Aviation System Planning Review Conference, please write to the following address giving (1) name, (2) address, (3) company/association if any, (4) area of interest (Airports, Air Traffic Control, R&D or specify) and enclose a check (if publications are desired) payable to the Federal Aviation Administration:

Federal Aviation Administration, Attention: HQ-200, 800 Independence Avenue SW., Washington, DC 20591.

Issued in Washington, D.C., on October 28, 1971.

RONALD W. PULLING,
Acting Associate Administrator for Plans.

[FR Doc.71-16112 Filed 11-3-71;8:52 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-404; 50-405]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matters

The Virginia Electric and Power Co., 700 East Franklin Street, Richmond, VA 23209, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, dated September 15, 1971, for authorization to construct and operate two additional nuclear reactors, designated as the North Anna Power Station Units No. 3 and No. 4, on the applicant's site in Louisa County, Va.

The site is located south of the North Anna River, approximately 24 miles southwest of Fredericksburg, 40 miles north-northwest of Richmond, Va., and 38 miles east of Charlottesville, Va. The reactors will be located adjacent to North Anna Power Station Units No. 1 and No. 2 on a peninsula in a reservoir that is to be formed when an earthen dam is constructed approximately 5 miles southeast of the site.

The proposed nuclear powerplant will consist of two pressurized water reactors, each of which is designed for initial operation at approximately 2,631 thermal megawatts with a gross electrical output of approximately 950 megawatts.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after October 21, 1971.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Office of the Board of Supervisors, Louisa County Courthouse, Louisa, Va. 23093.

Dated at Bethesda, Md., this 5th day of October 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director, Division of Reactor Licensing.

[FR Doc.71-14808 Filed 10-20-71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 22628; Order 71-10-120]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order To Show Cause Regarding Service Mail Rate

Issued under delegated authority October 28, 1971.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA), and adopted by mail vote. The agreement has been assigned the above-designated CAB agreement number.

The agreement permits BWIA to postpone to a date not later than November 30, 1971, the performance of its inaugural flights for new service between Antigua and St. Lucia.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found, on a tentative basis, that resolution 100(Mail 881) 200h, which is incorporated in Agreement CAB 22741 is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Action on agreement CAB 22741 be and hereby is deferred with a view toward eventual approval.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-16142 Filed 11-3-71;8:53 am]

[Docket No. 23761; Order 71-10-95]

SEDALIA, MARSHALL, BOONVILLE STAGE LINES, INC.

Order To Show Cause Regarding Service Mail Rate

Issued under delegated authority October 21, 1971.

The Postmaster General filed a notice of intent August 26, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 65 cents per great circle aircraft mile for the transportation of mail by aircraft between Chicago, Ill., Des Moines, Iowa, and Omaha, Nebr.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Postal Service and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with two Beech S-18 or equivalent twin-engine aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Sedalia, Marshall, Boonville Stage Lines, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 65 cents per great circle aircraft mile between Chicago, Ill., Des Moines, Iowa, and Omaha, Nebr., flown with two Beech S-18 or equivalent twin-engine aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly secitons 204(a) and 406 thereof, and regulations promulgated in 14 CFR Parts 302 and 298, and 14 CFR 385.16(f),

It is ordered, That:

1. Sedalia, Marshall, Boonville Stage Lines, Inc., the Postmaster General, Frontier Airlines, Inc., Ozark Air Lines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Sedalia, Marshall, Boonville Stage Lines, Inc.

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served on Sedalia, Marshall, Boonville Stage Lines, Inc., the Postmaster General, Frontier Airlines, Inc., Ozark Air Lines, Inc., and United Air Lines, Inc.

This mail rate matter has been reviewed under Order 71-8-78, dated August 17, 1971, as amended by Order 71-9-51, dated September 13, 1971, and is consistent with the stabilization of fares, rates, and charges for passengers and property.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-16143 Filed 11-3-71;8:53 am]

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

ENVIRONMENTAL PROTECTION AGENCY

AMERICAN CYANAMID CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2H2669) has been filed by American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, NJ 08540, proposing that §§ 121.1172 and 121.2504 *Malathion* (21 CFR 121.1172 and 121.2504) be amended:

1. In § 121.1172, by reducing to 100 milligrams per square foot the permitted 200 milligrams per square foot of malathion incorporated into paper trays intended for use only in the drying of grapes (raisins) and by increasing to 12 parts per million the eight parts per million of total residue of malathion permitted on processed ready-to-eat raisins from drying on treated trays and from application to grapes before harvest.

2. In § 121.2504, by reducing to 100 milligrams per square foot the permitted 200 milligrams per square foot of malathion that may be incorporated into paper trays for the safe control of insects during the drying of grapes (raisins) in compliance with § 121.1172.

Dated: October 28, 1971.

WILLIAM M. UPHOLT, *Deputy Assistant Administrator for Pesticides Programs.*

[FR Doc.71-16051 Filed 11-3-71;8:46 am]

ALDRIN AND DIELDRIN

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (e), (m), 68 Stat. 514, 517; 21 U.S.C. 346a (e), (m)) and by virtue of the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623) and delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), notice is hereby given that a petition (PP 1E1053) has been filed by the Environmental Defense Fund, Inc., proposing that established finite tolerances for residues of aldrin (§ 420.135) and dieldrin (§ 420.137) be repealed. Since residues of aldrin and dieldrin now in the environment will continue to transfer to raw agricultural commodities, the petitioner proposes that these repeals be accomplished through a stepwise lowering of tolerances on an individual commodity basis, culminating in zero tolerances on all commodities at the earliest possible date.

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20460, written comments on this proposal, preferably in quintuplicate. Comments may be accompanied by a memorandum or brief in support thereof. The Administrator explicitly invites comments on alternative pest control procedures and potential hazards of aldrin and dieldrin to human health and the quality of the environment.

Dated: October 27, 1971.

WILLIAM M. UPHOLT, *Deputy Assistant Administrator for Pesticides Programs.*

[FR Doc.71-16052 Filed 11-3-71;8:46 am]

CARBOXIN

Notice of Renewal of Temporary Tolerance

Uniroyal Chemical, Division of Uniroyal, Inc., Bethany, Conn. 06525, was granted temporary tolerances for total negligible residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,

4-oxathiin-4-oxide (calculated as carboxin) in or on the raw agricultural commodities barley (grain and forage), peanuts, peanut hay, sorghum (grain and forage), and wheat (grain and forage) at 0.2 part per million on August 8, 1969 (notice was published in the FEDERAL REGISTER of August 15, 1969 (34 F.R. 13286)). The tolerances expired August 8, 1970.

The firm has requested a renewal to obtain additional experimental data and has amended the petition by (1) requesting a temporary tolerance of 0.2 part per million for combined negligible residues of the fungicide on cottonseed and oats (grain and forage) and (2) by withdrawing the tolerance on sorghum (grain and forage). A tolerance of 0.2 part per million was established for combined negligible residues of carboxin and its metabolite in or on cottonseed (notice was published in the FEDERAL REGISTER of August 11, 1971 (36 F.R. 14730)).

It is concluded that such renewal will protect the public health. A condition under which these temporary tolerances are renewed is that the fungicide will be used in accordance with the temporary permit which is being issued concurrently by the Environmental Protection Agency and which provides for distribution under the Uniroyal name.

A renewal has been granted that will expire October 28, 1972.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038).

Dated: October 28, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16053 Filed 11-3-71;8:46 am]

CHEMAGRO CORP.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 1F1166) has been filed by Chemagro Corp., Post Office Box 4913, Hawthorn Road, Kansas City, MO 64120, proposing establishment of tolerances (21 CFR Part 420) for residues of the insecticide *O,O*-dimethyl *S*-[4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate in or on the raw agricultural commodities pasture grass hay at 5 parts per million and pasture grass at 2 parts per million.

The analytical method proposed in the petition for determining residues of the insecticide is a gas chromatographic procedure using a potassium chloride thermionic emission flame detector.

Dated: October 28, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16054 Filed 11-3-71;8:46 am]

UNION CARBIDE CORP.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 2F1188) has been filed by the Union Carbide Corp., 800 Wyatt Building, Washington, D.C. 20005, proposing establishment of tolerances (21 CFR Part 420) for residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio) propionaldehyde O-(methylcarbamoyl) oxime) and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl) oxime in or on the raw agricultural commodities sugarcane fodder and forage at 0.2 part per million and sugarcane and sweet potatoes at 0.02 part per million (negligible residue).

The analytical method proposed in the petition for determining residues of the pesticide is a procedure in which the residues are reacted with peracetic acid to form the sulfone metabolite, which is analyzed by gas chromatography using a flame photometric detector with a filter specific for sulfur.

Dated: October 28, 1971.

WILLIAM M. UPHOLT,
Assistant Deputy Administrator for Pesticides Programs.

[FR Doc.71-16055 Filed 11-3-71;8:46 am]

FEDERAL MARITIME COMMISSION

CUNARD-ONA LTD. AND CUNARD LINE LTD.

Notice of Issuance of Casualty Certificate

Security for the protection of the public; financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cunard—ONA Ltd. and Cunard Line Ltd., 555 Fifth Avenue, New York, NY 10017.

Dated: November 1, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-16159 Filed 11-3-71;8:54 am]

CUNARD-ONA LTD. AND CUNARD LINE LTD.

Notice of Issuance of Performance Certificate

Security for the protection of the public; indemnification of passengers for nonperformance of transportation.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cunard-Ona Ltd. and Cunard Line Ltd., 555 Fifth Avenue, New York, NY 10017.

Dated: November 1, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-16160 Filed 11-3-71;8:54 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report 568]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

NOVEMBER 1, 1971.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

File number, applicant, call sign, and nature of application

5098-C2-P-71—Radiofone Corp. of New Jersey (New) (Resubmitted), For a new station to be located on Limestone Road, 4 miles northwest of Marshallton, Del., to operate on 454.150 MHz.

2251-C2-P-72—Central Mobil and Paging Service (New), For a new station to be located at 419 Stewart, Lewiston, ID, to operate on 152.03 MHz.

2252-C2-MP-72—Radio Telephone Service (KIJ356), Replace transmitter operating on 454.225 MHz, change the antenna system and relocate facilities at location No. 2 to: 2 Peachtree Street, Atlanta, GA.

2254-C2-MP-(4)-72—Business Communications, Inc. (KAA888), Relocate facilities operating on 454.075, 454.125, 454.175, and 454.225 MHz at location No. 2 to: 7777 Bonhomme Avenue, St. Louis, MO.

2255-C2-P-72—Mobilfone Radio System (KCC802), Replace transmitter operating on 43.22 MHz located at Summit Long Hill, Waterbury, Conn.

2269-C2-P-72—Liberty Communications (KOI310), Replace transmitter operating on 35.58 MHz and change the transmission line. Location: Summit Long Hill, Waterbury, Conn. (one-way).

2272-C2-P-72—Evans Telephone Answering Service (New), For a new one-way station to be located at 1400 Main Street, Columbia, SC, to operate on 152.24 MHz.

2273-C2-P-72—Intra State Telephone Co. (KSJ807), For additional facilities to operate on 152.51 MHz, located at the northeast corner of Seminary and Knox Streets, Galesburg, IL.

2374-C2-P-72—General Telephone Co. of California (KJU806), For additional facilities to operate on 35.58 MHz at a new site described as location No. 5: 1.6 miles northeast of intersection of Erbes Road and Hillcrest Drive, Thousand Oaks, CA.

2375-C2-P-72—Salinas Valley Radio Telephone Co. (KMA637), For additional facilities to operate on 158.40 MHz at location No. 3: 323 Rianda Street, Salinas, CA.

2376-C2-P-72—Auto Page Northwest (KUA285), Replace transmitter, change the antenna system and relocate control facilities operating on 454.250 MHz at location No. 2 to: 510 Northwest 10th Street, Pendleton, OR.

Major Amendment

2166-C2-P-72—Ratel Communication Co. (New), Amended to change the base frequency to 152.24 MHz. See public notice dated Oct. 26, 1971, Report No. 567.

RURAL RADIO SERVICE

2266-C1-P/ML-72—Continental Telephone Co. of California (KNL47), For additional facilities to operate on frequencies: 157.80, 157.83, 157.86, 157.89, 157.92, 157.95, 157.98, 158.01, 157.04, and 157.07 MHz with (107 units) in any temporary fixed location within the territory of the grantee.

2377-C1-P-72—South Central Bell Telephone Co. (WHB37), Relocate facilities operating on 459.65 MHz to approximately 3 miles southwest of Burrwood, La.

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)

2248-C1-P-72—Frank K. Spain doing business as Microwave Service (KOV45), Location: Top of Big Mountain, Mont., at latitude 48°30'06'' N., longitude 114°20'35'' W. To change location of the Whitefish, Mont., receiving site to latitude 48°22'13'' N., longitude 114°-17'38'' W. Frequencies 6184.5, 6259.5, and 6334.5 MHz on azimuth 166°05'.

2249-C1-MP-72—Mountain Microwave Corp. (WAY26), Location: 2 miles north-northwest of Redfield, S. Dak., at latitude 44°54'40'' N., longitude 98°32'05'' W. To change frequency from 11,545 MHz to 11,305 MHz on azimuth 01°40'. Applicant is requesting special temporary authority to make this change.

2250-C1-P-72—Mountain Microwave Corp. (KBI23), Location: 12 miles west-southwest of Eads, Colo., at latitude 38°24'29'' N., longitude 102°58'29'' W. To add frequency 6404.8 MHz on azimuth 136°20'. Applicant proposes to provide the television signal of station KRMA-TV of Denver, Colo., to Media Cable TV Systems, Inc., in Lamar, Colo.

The following applicants proposes to establish omnidirectional facilities for the provision of common carrier "Subscriber-Programed" television service.

2253-C1-P-72—Imperial Communications Corp. (New), New station 110 West C Street, San Diego, CA, latitude 32°43'01'' N., longitude 117°09'48'' W. Frequencies 2150.200 (aural) and 2152.325 MHz (visual) toward various points of system and 2154.000 MHz (aural) and 2158.500 MHz (visual) toward various points of system.

2274-C1-P-72—Microband Corp. of America (New), New station at Colorado State Bank Building, 16th and Broadway, Denver, CO, latitude 39°44'27'' N., longitude 104°59'15'' W. Frequencies 2152.325 MHz (visual) and 2150.20 MHz (aural) toward various receiving points of system and 2158.50 MHz (visual) and 2154.00 MHz (aural) toward various receiving points of system.

2408-C1-P-72—American Communications & Electronics Corp. (New), A new station at JANAF Building, JANAF Shopping Center, Norfolk, Va., latitude 36°51'35'' N., longitude 76°12'15'' W. Frequencies 2152.325 MHz and 2150.20 MHz toward various receiving points of system and 2158.50 & 2154.00 MHz toward various receiving points of system. 2152.325 and 2158.50 MHz (visual) and 2150.20 and 2154.00 (aural).

[FR Doc.71-16158 Filed 11-3-71;8:54 am]

FEDERAL POWER COMMISSION

[Docket No. CP72-105]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

OCTOBER 28, 1971.

Take notice that on October 15, 1971, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP72-105 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Amoco Production Co. (Amoco) and the construction and operation of facilities therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant estimates that deliveries of up to 20,000 Mcf of gas per day will be made by Amoco to Applicant in the Buffalo Wallow Field area, Hemphill and Wheeler Counties, Tex. Redeliveries to Amoco of equivalent volumes of gas will be made at a proposed point of exchange to be constructed by Applicant in Vermilion Parish, La. Applicant proposes to operate exchange facilities in Vermilion Parish, La., and to utilize gas purchase facilities in Hemphill and Wheeler Counties, Tex., constructed under Applicant's budget type purchase facilities certificate issued in Docket No. CP71-83, to effectuate the subject exchange. No monetary compensation is provided for volumes exchanged.

Applicant states that the estimated cost of the proposed facilities in Vermilion Parish, La., is $21,900 for which Applicant will be reimbursed by Amoco.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the

Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16056 Filed 11-3-71;8:46 am]

[Docket No. CP72-106]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

OCTOBER 28, 1971.

Take notice that on October 19, 1971, Natural Gas Pipeline Co. of America (applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP72-106 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1972, and operation of meter stations, lateral pipelines and taps on applicant's existing natural gas transmission system to enable applicant to take into its pipeline system natural gas which will be purchased from producers in the several areas thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this budget-type application is to augment applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various areas located in the vicinity of its system.

The total costs of all facilities for which authorization is sought herein will not exceed $4 million, with no single project to exceed a cost of $1 million. Applicant states that these costs will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16057 Filed 11-3-71;8:46 am]

[Docket No. RP72-50]

NORTHERN ILLINOIS GAS CO. AND NORTHERN NATURAL GAS CO.

Notice of Complaint

NOVEMBER 1, 1971.

On October 4, 1971, Northern Illinois Gas Co. (NI Gas) filed a complaint pursuant to section 5(a) of the Natural Gas Act and § 1.6 of the Commission's rules of practice and procedure against certain operating practices of Northern Natural Gas Co. (Northern Natural). NI Gas also filed a memorandum in support of tariff complaint, stating that Northern Natural engages in a discriminatory practice in making overrun gas available from its system first to full requirements customers in full satisfaction of their demand before making any overrun gas available to NI Gas, a partial requirements customer.

Any person desiring to be heard or to make any protest with reference to NI Gas' complaint should on or before November 15, 1971, file with the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. NI Gas' complaint is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16164 Filed 11-3-71;8:55 am]

[Docket No. RP72-51]

TENNESSEE GAS PIPELINE CO.

Notice of Proposed Change in FPC Gas Tariff

NOVEMBER 1, 1971.

Take notice that on October 14, 1971, Tennessee Gas Pipeline Co. (Tennessee) (Division of Tenneco, Inc.) tendered for filing changes in its FPC Gas Tariff pursuant to section 4(e) of the Natural Gas Act, to be effective November 14, 1971. The proposed tariff revisions would reflect increases in purchased gas costs in the annual amount of $3,519,775, which result from rate increases filed by producers in the southern Louisiana area pursuant to Commission Opinion Nos. 598 and 598-A. Tennessee states that this amount was calculated on the basis of volumes purchased by Tennessee from the indicated producers during the 12-month period ending July 31, 1971, resulting in an average increase of 0.27 cents per Mcf for Tennessee's sales volume.

Copies of the proposed tariff changes were served on Tennessee's customers and interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1971, file with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, petitions to intervene or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Any order or orders issued in these proceedings will be subject to the Commission's Statement of Policy Implementing the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799, as

amended by Public Law 92-15, 85 Stat. 38) and Executive Order 11615, including such amendments as the Commission may require.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16165 Filed 11-3-71;8:55 am]

[Docket No. CP72-109]

TENNESSEE GAS PIPELINE CO.

Notice of Application

OCTOBER 28, 1971.

Take notice that on October 19, 1971, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (applicant), Post Office Box 2511, Houston, TX 77001, filed in Docket No. CP72-109 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1972, and operation of certain natural gas facilities to enable applicant to take into its pipeline system supplies of natural gas which will be purchased from producers in the general area of said system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in contracting for and connecting supplies of natural gas to its pipeline system. The total cost of the facilities proposed herein will not exceed $7 million, with no single offshore project costing in excess of $1,750,000, and no single onshore project costing in excess of $1 million. Applicant states that these costs will be financed from general funds or from its revolving credit.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16058 Filed 11-3-71;8:46 am]

[Docket No. CP66-233]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Petition To Amend

OCTOBER 26, 1971.

Take notice that on September 29, 1971, Transcontinental Gas Pipe Line Corp. (petitioner), Post Office Box 1396, Houston, TX 77001, filed in Docket No. CP66-233, a petition to amend the Commission's order issued in said docket pursuant to section 7(c) of the Natural Gas Act on May 19, 1967 (37 FPC 959), as amended, by authorizing elimination of the allocation of natural gas therein granted to North Carolina Natural Gas Corp. (North Carolina), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order of May 19, 1967, as amended, authorized petitioner to render natural gas service to North Carolina for a term of 5 years, commencing January 1, 1967, in the annual amount of 2 million Mcf under petitioner's rate schedule ACQ-2. Petitioner proposes to terminate such service, effective January 1, 1972, and states that the volume of 2 million Mcf will then be available to support the general gas requirements of its system. Petitioner states that North Carolina has agreed to termination of said service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 12, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16059 Filed 11-3-71;8:47 am]

FEDERAL RESERVE SYSTEM

BARNETT BANKS OF FLORIDA, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Barnett Banks of Florida, Inc., which is a bank holding company located in Jacksonville, Fla., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of Barnett Bank of Brandon, National Association, Brandon, Fla., a proposed new bank.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, October 28, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16060 Filed 11-3-71;8:47 am]

COMMERCIAL BANCORPORATION OF COLORADO

Formation of One-Bank Holding Company

Commercial Bancorporation of Colorado, Sterling, Colo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of action whereby

applicant would become a bank holding company through acquisition of 94.78 percent of the voting shares of Commercial Savings Bank, Sterling, Colo.

The application may be inspected at the Federal Reserve Bank of Kansas City.

Section 3(c) of the Act requires that the Board consider the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the bank concerned, and the convenience and needs of the communities to be served.

Any person wishing to comment on the application should submit his views in writing to the Reserve bank to be received not later than November 8, 1971.

Pursuant to § 222.3(b) of regulation Y, this application shall be deemed to be approved on November 22, 1971, unless the applicant is notified to the contrary before that time, or is granted approval at an earlier date.

Board of Governors of the Federal Reserve System, October 28, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16061 Filed 11-3-71;8:47 am]

COMMERCE BANCSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Commerce Bancshares, Inc., which is a bank holding company located in Kansas City, Mo., for prior approval by the Board of Governors of the acquisition by applicant of more than 80 percent of the voting shares of Clay County State Bank, Excelsior Springs, Mo.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Kansas City.

Board of Governors of the Federal Reserve System, October 29, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16062 Filed 11-3-71;8:47 am]

ILLINOIS BANCSHARES, INC.

Formation of One-Bank Holding Company

Illinois Bancshares, Inc., Mascoutah, Ill., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of action whereby applicant would become a bank holding company through acquisition of 89.3 percent of the voting shares of Bank of Mascoutah, Mascoutah, Ill.

The application may be inspected at the Federal Reserve Bank of St. Louis.

Section 3(c) of the act requires that the Board consider the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the bank concerned, and the convenience and needs of the communities to be served.

Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than November 22, 1971.

Pursuant to § 222.3(b) of Regulation Y, this application shall be deemed to be approved on December 6, 1971, unless the applicant is notified to the contrary before that time, or is granted approval at an earlier date.

Board of Governors of the Federal Reserve System, October 28, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16063 Filed 11-3-71;8:47 am]

SOUTHWEST BANCSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Southwest Bancshares, Inc., which is a bank holding company located in Houston, Tex., for prior approval by the Board of Governors of the acquisition by applicant of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Long Point National Bank of Houston, Houston, Tex.

Section 3(c) of the act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Dallas.

Board of Governors of the Federal Reserve System, October 28, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16064 Filed 11-3-71;8:47 am]

THIRD NATIONAL CORP.

Formation of One-Bank Holding Company

Third National Corp., Nashville, Tenn., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of action whereby applicant would become a bank holding company through acquisition of 100 percent of the voting shares of Third National Bank in Nashville, Nashville, Tenn.

The application may be inspected at the Federal Reserve Bank of Atlanta.

Section 3(c) of the Act requires that the Board consider the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the bank concerned, and the convenience and needs of the communities to be served.

Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than November 18, 1971.

Pursuant to § 222.3(b) of Regulation Y, this application shall be deemed to be approved on December 3, 1971, unless the applicant is notified to the contrary before that time, or is granted approval at an earlier date.

Board of Governors of the Federal Reserve System, October 28, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16065 Filed 11-3-71;8:47 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THAILAND

Entry or Withdrawal From Warehouse for Consumption

NOVEMBER 2, 1971.

On July 3, 1971, there was published in the FEDERAL REGISTER (36 F.R. 12714) a letter of June 25, 1971 from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs directing that the amount of cotton textile products in Category 60, produced or manufactured in Thailand, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning April 30, 1971, and extending through April 29, 1972, be limited to a designated level. The designated level has already been exhausted by entries of the cotton textile products in question.

Consultations may be held between the Governments of the United States and Thailand in the near future to determine the disposition of cotton textile products that have been denied entry under the terms of the aforesaid letter. In order to provide the U.S. Government with the information necessary for consultation with the Government of Thailand, all interested parties are advised to report, as soon as possible and no later than 10 days from the date of publication of this notice, to the Office of Textiles, Trade Analysis Division, Department of Commerce, Washington, D.C. 20230, on any cotton textile products in Category 60 produced or manufactured in Thailand and exported from Thailand prior to October 1, 1971, which have been denied entry and are in the United States either in a bonded warehouse, general order warehouse or a foreign trade zone on the date of publication of this notice. Reports should include the following information:

Complete description of the goods.
Date of shipment.
Date of arrival.
Categories under which classified.
Quantities involved, expressed in dozens.
Location of goods including U.S. Customs port.
Bond number and general order lot number or foreign trade zone number and lot number assigned.

Failure to so report within the designated period of time may result in the cotton textile products not being eligible for entry into the United States for consumption.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[FR Doc. 71-16226 Filed 11-3-71;9:58 am]

SECURITIES AND EXCHANGE COMMISSION

[Releases Nos. 33-5204 and 34-9374]

"HOT ISSUES" SECURITIES MARKETS

Preliminary Notice of Public Fact Finding Investigation

The SEC announced today that it has authorized a public fact-finding investigatory proceeding pursuant to section 21(a) of the Securities Exchange Act of 1934 and Rule 4(b) of its rules of practice in the matter of the "hot issues" securities markets, i.e., markets in which new issues of securities have experienced substantial price rises in their aftermarkets. The purpose of this proceeding is to develop a factual basis for determining (1) whether revisions to the Commission's rules, regulations and forms under the Securities Act of 1933 and the Securities Exchange Act of 1934 are necessary in the public interest and for the protection of investors, and (2) whether further legislation should be recommended to Congress.

This public investigatory proceeding is intended as further implementation of the Commission's intention, as expressed in its letter, dated March 10, 1971, transmitting the Institutional Investors Study Report of the Securities and Exchange Commission to the Congress, to continue to evaluate problems created by the new issues security market.

The proceeding will involve an in-depth, historical, factual analysis of past "hot issues" securities markets by means of review of registration statements and reports filed by registrants pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934 and the analysis of material to be requested from promoters and management of companies registering new issues with the Commission and from underwriters and purchasers of such new issues. The scope of the investigation will include inquiries with respect to: (1) Whether the Commission's rules, regulations and forms under the Securities Act of 1933 result in adequate disclosures that reflect economic reality regarding business and financial operations of registrants offering new "hot issues," and (2) whether the Commission's rules under the Securities Exchange Act of 1934 provide adequate protection to investors in connection with purchases and sales of securities in a "hot issue" market.

At a later date, the Commission intends to set a date for a public hearing relating to this proceeding at which time interested persons will have the opportunity to appear and present their views on this subject. However, during the course of the proceeding, prior to the actual hearing, persons wishing to submit written statements of their views concerning the problems of the "hot issues" security market are invited to do so. Any such comment should be addressed to Alan B. Levenson, Director, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549.

By the Commission, October 21, 1971.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16037 Filed 11-3-71;8:49 am]

[70-5109]

ALLEGHENY POWER SYSTEM, INC. ET AL.

Notice of Proposed Issue and Sale of Common Stock

OCTOBER 28, 1971.

Notice is hereby given that Allegheny Power System, Inc., 320 Park Avenue, New York, NY 10022 (APS), a registered holding company, and its wholly owned electric utility subsidiary companies, Monongahela Power Co. (Monongahela), The Potomac Edison Co. (Potomac), and West Penn Power Co. (West Penn), have filed a joint application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, and 12 thereof and rules 43, 44, and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration, which is summarized below, for a complete statement of the proposed transactions.

APS proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the act, 2,200,000 additional shares of its authorized but unissued common stock, par value $2.50 per share. The price will be determined by the competitive bidding. The net proceeds, estimated at approximately $48 million based on current market values, will be used to acquire additional shares of common stock of Monongahela, Potomac, and West Penn (the "subsidiary companies") as hereinafter outlined.

Monongahela and Potomac each propose to amend their respective charters to increase their authorized shares of common stock, and each of the subsidiary companies proposes to issue and sell to APS from time to time, prior to December 31, 1972, additional shares of their common stock for cash consideration equal to the aggregate par or stated values thereof, as follows:

Subsidiary company	Proposed increase in authorized shares	Proposed issuance of shares	Cash consideration
Monongahela: Common stock, $50 par value	750,000	400,000	$20,000,000
Potomac: Common stock, No par value (stated value, $20)	1,000,000	1,000,000	20,000,000
West Penn: Common stock, No par value (stated value, $20)		500,000	10,000,000

The net proceeds of these issues, together with other corporate funds, are to be used by the subsidiary companies to finance their construction programs. Construction expenditures for 1972 are estimated at $56 million for Monongahela, $51 million for Potomac, and $78 million for West Penn.

APS proposes to pledge with Chemical Bank, Trustee under Trust Indenture dated as of September 1, 1949, as supplemented, securing its 3½ percent Sinking Fund Collateral Trust Bonds, all of the acquired common stock of Monongahela and Potomac, and 473,179 shares of the acquired common stock of West Penn.

APS also proposes to retire 95 shares of its outstanding common stock which it presently holds in its treasury. These shares were acquired by APS in connection with its Plan under section 11(e) of the Act for the elimination of publicly held minority interests in the common stock of West Penn (Holding Company Act Release No. 15145, November 13, 1964). Upon their retirement, the par value of such shares ($237.50) will be charged to common stock capital and credited to other paid-in capital.

The fees and expenses to be paid in connection with the issue and sale of the additional shares of APS common stock are estimated to total $119,000, including accountant's fees of $48,000 and counsel fees of $12,500. Fees and expenses of counsel for the successful bidders, to be paid by such bidders, are estimated at $13,000. The fees and expenses to be paid in connection with the authorization, issue and sale of the additional shares of the subsidiary companies common stock are estimated at not to exceed $600 per subsidiary company.

It is stated that the Maryland Public Service Commission has jurisdiction over the issue and sale of the common stock of APS and Potomac and the acquisition and pledge by APS of the common stock of Potomac, the Ohio Public Utilities Commission has jurisdiction over the issue and sale of the common stock of Monongahela; and the Pennsylvania Public Utility Commission has jurisdiction over the issue and sale of the common stock of West Penn. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 19, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16088 Filed 11-3-71;8:49 am]

[File No. 7-3846]

CHRYSLER FINANCIAL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 27, 1971.

In the matter of application of the Midwest Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder, for unlisted trading privileges in the warrants to purchase common stock of the following company, which security is listed and registered on one or more other national securities exchanges;

Chrysler Financial Corporation, File No. 7-3846. Warrants to purchase common stock of Chrysler Corp.

Upon receipt of a request, on or before November 11, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16096 Filed 11-3-71;8:50 am]

[70-5110]

CONNECTICUT LIGHT AND POWER CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

OCTOBER 29, 1971.

Notice is hereby given that the Connecticut Light and Power Co. (CL & P), Selden Street, Berlin, Conn. 06037, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the act and rule 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

CL & P proposes to issue and sell, subject to the competitive bidding requirements of rule 50 under the act, $30 million principal amount of —— percent First and Refunding Mortgage Bonds, Series X, due December 1, 2001. The interest rate (which shall be a multiple of ⅛ of 1 percent and the price, exclusive of accrued interest, to be paid to CL & P (which shall be not less than 99 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under the Indenture of Mortgage and Deed of Trust dated May 1, 1921, between CL & P and Bankers Trust Co., trustee, as heretofore supplemented and amended and as to be further supplemented by a supplemental indenture to be dated as of December 1, 1971, and which contains a prohibition until December 1, 1976, against refunding the issue with the proceeds of funds borrowed at a lower effective interest cost.

CL & P also proposes to issue and sell, subject to the competitive bidding requirements of rule 50 under the act, 400,000 shares of its $— Preferred Stock—Series J, $50 par value. The dividend rate of the preferred stock (which shall be a multiple of $0.04) and the price, exclusive of accrued dividends, to be paid to CL & P (which shall be not less than $50 nor more than $51.375 per share) will be determined by the competitive bidding. The terms of the preferred stock include a prohibition against refunding the issue prior to December 1, 1976, directly or indirectly, with funds derived from the issuance of debt securities at a lower effective interest cost or preferred stock at a lower dividend cost.

It is stated that the net proceeds from the issue and sale of the bonds and preferred stock will be used to repay short-term borrowings incurred in financing CL & P's construction program and which are expected to aggregate $87 million prior to the time of the proposed transactions. Northeast Utilities plans to make a $15 million capital contribution to further reduce short-term borrowings (Holding Company Act Release No.

16979). CL & P's construction program for 1971–72 is estimated to total approximately $269 million.

The fees and expenses incident to the proposed transactions will be filed by amendment. The filing states that the issue and sale of the bonds and preferred stock is subject to the approval of the Connecticut Public Utilities Commission. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 26, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16116 Filed 11-3-71;8:51 am]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

OCTOBER 28, 1971.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 28, 1971 through November 6, 1971.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16089 Filed 11-3-71;8:49 am]

[811-1891]

DESIGN FUND, INC.

Notice of Application for Order Declaring That Company Has Ceased To Be an Investment Company

OCTOBER 29, 1971.

Notice is hereby given that Design Fund, Inc. (Applicant), 1450 Grant Avenue, Novato, CA 94947, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company.

All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, summarized below.

At a special meeting of shareholders of applicant on August 24, 1971, the shareholders approved proposals to: (1) Terminate the management contract between the Design Fund, Inc. and Marker Management, Inc., the applicant's investment advisor, and (2) liquidate Applicant's portfolio and distribute the proceeds of the liquidation, less closing costs, to the shareholders as soon as practical. The final closing costs of Applicant were specifically approved in a meeting held by the shareholders on October 1, 1971, and on October 3, 1971, the final costs of Applicant were paid and the remaining proceeds were paid out to the shareholders.

Applicant states that Applicant currently has no shareholders and no assets and that it is the intent of the directors of Applicant to cease business.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 18, 1971, 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16117 Filed 11-3-71;8:51 am]

[812-3023]

EATON & HOWARD STOCK FUND

Notice of Filing of Application

OCTOBER 28, 1971.

Notice is hereby given that Eaton & Howard Stock Fund, 24 Federal Street, Boston, MA 02110 (Applicant), a Massachusetts corporation registered under the Investment Company Act of 1940 (Act) as an open-end diversified management investment company, has filed an application pursuant to section 6(c) of the Act requesting an order of the Commission exempting from the provisions of section 22(d) of the Act a transaction in which Applicant's redeemable securities will be issued at a price other than the current public offering price described in the prospectus, in exchange for the assets of Bob White; Inc. (Bob White). All interested persons are referred to the application on file with the Commission for a statement of Applicant's representations which are summarized below.

Bob White, an Ohio corporation, is an investment company all of the outstanding stock of which is owned beneficially by two persons. Applicant asserts that Bob White is excepted from the definition of an investment company under the Act by reason of the provisions of section 3(c)(1) of the Act.

Pursant to an agreement between Applicant and Bob White, substantially all of the cash and securities owned by Bob White with a value of $747,716 as of June 30, 1971, will be transferred to Applicant in exchange for shares of Applicant's capital stock. The number of shares of Applicant to be issued is to be determined by dividing the aggregate market value (with certain adjustments as set forth in the application) of the assets of Bob White to be transferred to Applicant by the net asset value per share of the Applicant, both to be determined as of the Valuation time, as defined in the agreements.

Since the exchange is expected to be tax free for Bob White and its stockholders, Applicant's cost-basis for tax purposes for the assets acquired from Bob White will be the same as Bob White's cost basis, rather than the price actually paid by Applicant for the assets. If the valuation under the agreement had taken place on June 30, 1971, Bob White would have received 52,991 shares of Applicant's stock.

When received by Bob White, the shares of Applicant, which are registered under the Securities Act of 1933, are to be distributed to the Bob White stockholders on the liquidation of Bob White. The stockholders of Bob White have no present intentions of redeeming or otherwise transferring any of Applicant's shares following the proposed transactions.

The Applicant represents that no affiliation exists between Bob White or its officers and stockholders and Applicant or any affiliated persons of Applicant and the agreement was negotiated at arm's length by the two companies. Applicant asserts that the proposed acquisition will be beneficial to its shareholders for various reasons, including, among other things, the fact that the resulting increase in assets will tend to reduce per share expenses of Applicant.

Section 22(d) of the Act provides that registered investment companies issuing redeemable securities may sell their shares only at the current public offering price as described in the prospectus. The exchange contemplated by the agreement would be prohibited by section 22(d) as being a sale of a redeemable security by a registered investment company at a price other than a current offering price described in the prospectus, unless exempted by an order under section 6(c) of the Act. Section 6(c) permits the Commission, upon application, to exempt such a transaction if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant contends that the proposed offering of its stock will comply with the provisions of the Act, other than section 22(d), and submits that the granting of the application would be in accordance with the established practice of the Commission, is necessary and appropriate in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 18, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of this interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16090 Filed 11-3-71;8:49 am]

[File No. 7-3853]

GREYHOUND CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 27, 1971.

In the matter of application of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the warrants to purchase common stock of the following company, which security is listed and registered on one or more other national securities exchanges;

Greyhound Corp., Warrants (Expiring May 14, 1980), File No. 7-3853.

Upon receipt of a request, on or before November 11, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16097 Filed 11-3-71;8:50 am]

[Files Nos. 7-3848—7-3852]

EQUIMARK CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 27, 1971.

In the matter of applications of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Equimark Corp	7-3848
Redman Industries, Inc	7-3849
Ryder System, Inc	7-3850
Topper Corp	7-3851
Winnebago Industries, Inc	7-3852

Upon receipt of a request, on or before November 11, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16098 Filed 11-3-71;8:50 am]

[812-2934]

HEDBERG & GORDON FUND, INC.

Notice of Filing of Application

OCTOBER 27, 1971.

Notice is hereby given that Hedberg & Gordon Fund, 1 Station Square, Paoli,

PA 19301 (Applicant), an open-end nondiversified management investment company, registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 6(c) of the Act for an order of exemption from the provisions of section 22(d) of the Act to permit the sale of Applicant's shares at net asset value and without the usual sales charge, to shareholders of record on August 1, 1971.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

From August 31, 1964, to January 31, 1966, Applicant's shares were offered to the public at net asset value per share without sales charge. From February 1, 1966, to January 31, 1969, Applicant's shares were offered to the public with a sales charge of up to 3 percent. Since February 1, 1969, Applicant's shares have been offered to the public at net asset value with no sales charge. A sales charge of up to 8½ percent will be imposed on August 2, 1971. As of June 15, 1971, Applicant had outstanding 1,817,913 shares held by 4,651 shareholders. Net assets on that date were $15,748,405.

Section 22(d) of the Act provides that registered investment companies issuing redeemable securities may sell their shares only at a current offering price described in the prospectus. Section 6(c) permits the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant seeks an exemption from section 22(d) to permit the sale of its shares without any sales load to any person who is a shareholder of Applicant as of August 1, 1971. Applicant alleges that permitting shareholders as of August 1, 1971, to continue to purchase Applicant's shares without the imposition of a sales charge will give recognition to whatever reliance those shareholders have placed upon the fact that Applicant presently sells without sales charge. If the application is granted, Applicant undertakes to obtain the written assurance of each purchaser that the purchase is made for investment purposes, not for distribution. Applicant's prospectus will disclose the number of its shares that have been sold at net asset value and the dollar amount represented thereby.

Notice is further given that any interested person may, not later than November 17, 1971, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16091 Filed 11-3-71;8:50 am]

[812-2933]

HEDBERG & GORDON LEVERAGE FUND

Notice of Filing of Application

OCTOBER 27, 1971.

Notice is hereby given that Hedberg & Gordon Leverage Fund, 1 Station Square, Paoli, PA 19301 (Applicant), an open-end nondiversified management investment company, registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of exemption from the provisions of section 22(d) of the Act to permit the sale of Applicant's shares at net asset value and without the usual sales charge, to shareholders of record on August 1, 1971.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Since its inception in September 1970, Applicant's shares have been offered to the public at net asset value with no sales charge. A sales charge of up to 2 percent will be imposed on August 2, 1971. As of June 15, 1971, Applicant had outstanding 2,058 shares held by 35 shareholders. Net assets on that date were $2,071,348.

Section 22(d) of the Act provides that registered investment companies issuing redeemable securities may sell their shares only at a current offering price described in the prospectus. Section 6(c) permits the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant seeks an exemption from section 22(d) to permit the sale of its shares without any sales load to any person who is a shareholder of Applicant as of August 1, 1971. Applicant alleges that permitting shareholders as of August 1, 1971, to continue to purchase Applicant's shares without the imposition of a sales charge will give recognition to whatever reliance those shareholders have placed upon the fact that Applicant presently sells without sale charge. If the application is granted, Applicant undertakes to obtain the written assurance of each purchaser that the purchase is made for investment purposes not for distribution. Applicant's prospectus will disclose the number of its shares that have been sold at net asset value and the dollar amount represented thereby.

Notice is further given that any interested person may not later than November 17, 1971, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16092 Filed 11-3-71;8:50 am]

[File No. 7-3847]

HEUBLEIN, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 27, 1971.

In the matter of application of the Midwest Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and

Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Heublein, Inc., File No. 7-3847.

Upon receipt of a request, on or before November 11, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16095 Filed 11-3-71;8:50 am]

[811-1421]

KENT GROWTH FUND, INC.

Notice of Proposal To Terminate Registration

OCTOBER 28, 1971.

Notice is heregy given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order on its own motion that Kent Growth Fund, Inc., 3156 Wilshire Boulevard, Los Angeles, CA 90005 (Fund), has ceased to be an investment company. The Fund filed notification of registration on Form N-8A on August 29, 1966, and was registered under the Act as an open-end diversified management investment company.

Inquiries by the staff have revealed that the principals of the Fund apparently cannot be located. Furthermore, it appears that all monies invested by the 12 original investors in Fund have been returned to those investors and that neither the Fund nor Bonanza Investment Management Co. (Bonanza) have engaged in any activity since January 20, 1970.

In light of the above, the Commission pursuant to Rule 479 under the Securities Act of 1933, declared Fund's registration statement under that Act abandoned, and issued an order to that effect on October 26, 1971. Under Rule 479 the staff was required to send notice by certified mail, return receipt requested, to the registrant and the agent for service reflected in the Securities Act registration statement. The 30-day time period provided by the rule has elapsed and no response has been received to the staff's notice.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 17, 1971, at 5:30, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Fund at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16093 Filed 11-3-71;8:50 am]

[70-5084]

METROPOLITAN EDISON CO.

Notice of Proposed Charter Amendment and Order Authorizing Solicitation of Proxies

OCTOBER 28, 1971.

Notice is hereby given that Metropolitan Edison Co., 2800 Pottsville Pike, Muhlenberg Township, Berks County, PA (Met-Ed), a wholly owned electric utility subsidiary company of General Public Utilities Corp. (GPU), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Met-Ed proposes to amend its corporate charter in order to increase the number of shares of cumulative preferred stock, par value $100 per share, which it is authorized to issue from its present authorization of 400,000 shares (of which 393,012 shares are now outstanding) to 1,400,000 shares. It is stated that the increase in the number of shares is being sought in order that Met-Ed will be in a position to issue and sell, from time to time, additional series of cumulative preferred stock to facilitate the financing of its construction program. The present estimated cost of Met-Ed's construction program is approximately $108 million for 1971, and $125 million annually for 1972 and 1973. Met-Ed anticipates that if the proposed charter amendment is approved, the 1 million shares of preferred stock will be substantially utilized within the next 3 years.

The declaration states that the proposed increase in the authorized cumulative preferred stock of Met-Ed will require the favorable vote of the holders of a majority of the total number of outstanding shares of preferred stock of all series. In addition, the favorable vote of the persons holding the larger amount in value of the preferred and common stocks collectively is also required. GPU has advised Met-Ed that it intends to vote the outstanding common stock in favor of the proposed increase. Met-Ed plans to seek such vote at a special meeting of holders of Met-Ed's preferred and common stock proposed to be held on December 10, 1971, and proposes to solicit proxies for the granting of such consent. Met-Ed is presently limited in the amount of additional funded debt it can issue by the interest coverage requirement contained in its bond and debenture indentures.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $223,030, including legal fees of $8,000 and State tax and filing fees of $200,030. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Met-Ed has requested that the effectiveness of its declaration with respect to the solicitation of proxies from holders of its preferred stock be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than November 16, 1971, request in writing that a hearing be held with respect to the proposed amendment of the charter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served

personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective pursuant to Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16094 Filed 11-3-71;8:50 am]

[70-5105]

NEW ENGLAND ELECTRIC SYSTEM AND MASSACHUSETTS GAS SYSTEM

Notice of Filing of Application for Exception From Competitive Bidding

OCTOBER 28, 1971.

Notice is hereby given that New England Electric System (NEES), a registered holding company, and its subsidiary holding company, Massachusetts Gas Co. (Mass Gas), 20 Turnpike Road, Westborough, MA 01581, have filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), for an exception from competitive bidding, designating Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

The Commission, by order dated March 19, 1964 (Holding Company Act Release No. 15035), which order became effective upon the entry, on April 3, 1968, of a judgment of the U.S. Court of Appeals for the First Circuit affirming the order of the Commission, directed NEES to dispose of all interests, direct or indirect, in its eight gas utility subsidiary companies. As a step in the divestment of its interests therein, NEES formed a new holding company, Mass Gas, which sold its common shares to NEES in exchange for the securities held by NEES in these subsidiary companies (Holding Company Act Release No. 16583, January 19, 1970).

Pursuant to an order dated March 25, 1971 (Holding Company Act Release No. 17066) the Commission granted NEES an exception from the competitive bidding requirements of Rule 50 with regard to the disposition of the four smallest gas utility subsidiary companies. On September 1, 1971, NEES and Mass Gas filed a plan for disposition of these gas utility subsidiary companies (Holding Company Act Release No. 17326).

NEES and Mass Gas now propose as a further step in the divestment to dispose of their interests in the four remaining gas utility subsidiary companies: Lawrence Gas Co. (Lawrence), Lynn Gas Co. (Lynn), Mystic Valley Gas Co. (Mystic), and North Shore Gas Co. (North Shore).[1]

NEES states that, based on its earlier experience with the smaller subsidiary companies, it expects to receive a variety of proposals with regard to the remaining four subsidiary companies, including an offer for assets or securities. NEES also states that an exception from competitive bidding would afford it the necessary flexibility to negotiate the best terms of sale. Any such definitive agreement or agreements will be subject to Commission approval pursuant to the applicable provisions of the Act. There will be no fees and expenses incurred with respect to their application, except an estimated amount of $500 to be paid by NEES for services at cost to the system service company.

Notice is further given that any interested person may, not later than November 22, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16118 Filed 11-3-71;8:51 am]

[1] NEES owns 100 percent of the common shares of Mass Gas and through Mass Gas owns 90.42 percent of Lawrence, 93.77 percent of Lynn, 99.43 percent of Mystic Valley, and 97.80 percent of North Shore.

[70-5093]

SOUTHERN CO.

Notice of Proposed Issue and Sale of Common Shares by Holding Company

Notice is hereby given that the Southern Co., Perimeter Center East, Post Office Box 720071, Atlanta, GA 30346 (Southern), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, as amended, which is summarized below, for a complete statement of the proposed transaction.

Southern proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, additional shares of its authorized but unissued common stock, par value $5 per share, in an amount which will result in aggregate cash proceeds of approximately $135 million. The precise number of shares of such additional common stock to be issued and sold will be supplied by amendment. At June 30, 1971, Southern had 55,449,500 shares of common stock outstanding. The proceeds of the sale of the common stock, together with other funds, will be invested by Southern in its subsidiary companies in the aggregate amount of $152 million ($68,500,000 had been invested on September 30, 1971) and will be used to pay all outstanding short-term promissory notes of Southern estimated to aggregate approximately $52 million at the time of the sale of the common stock, which notes were issued for the purpose of making such investments, and for other corporate purposes.

Estimates of the fees and expenses to be incurred in connection with the proposed issue and sale of common stock are to be filed by amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 24, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being

served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16099 Filed 11-3-71;8:50 am]

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-5066]

ALLIANCE ENTERPRISE CORP.

Notice of Issuance of License To Operate as Minority Enterprise Small Business Investment Company

On September 21, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 18765) stating that Alliance Enterprise Corp. had filed an application with the Small Business Administration (SBA), pursuant to section 107.102 of the SBA Rules and Regulations Governing Small Business Investment Companies (13 CFR 107.102 (1971)) for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business October 6, 1971, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 03/03-5066 to Alliance Enterprise Corp., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: October 22, 1971.

A. H. SINGER, *Associate Administrator for Operations and Investment.*

[FR Doc.71-16078 Filed 11-3-71;8:48 am]

[License No. 04/04-0033]

CATAWBA CAPITAL CORP.

Notice of License Surrender

Notice is hereby given that Catawba Capital Corp., 1415 East Boulevard, Charlotte, N.C. 28203, has surrendered its license to operate as a small business investment company pursuant to § 107.105 of the regulations governing small business investment companies (13 CFR 107.105 (1971)).

Catawba Capital Corp. was licensed as a small business investment company on August 9, 1961, to operate solely under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C., 661 et seq.), and the regulations promulgated thereunder.

Under the authority vested by the Act, and pursuant to the cited regulation, the surrender of the license is hereby accepted and all rights, privileges, and the franchises derived therefrom are canceled.

Dated: October 26, 1971.

A. H. SINGER, *Associate Administrator for Operations and Investment.*

[FR Doc.71-16079 Filed 11-3-71;8:48 am]

[License No. 05/07-5086]

CEDCO CAPITAL CORP.

Notice of Application for a License as a Minority Enterprise Small Business Investment Company

An application for a license to operate as a minority enterprise small business investment company (MESBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by Cedco Capital Corp. (applicant) with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1971)).

The officers and directors of the applicant are as follows:

James W. Howard, 505 Lake Shore Drive, Chicago, IL 60611, Chairman of the Board, Director.
Garland C. Guice, 5327 South Ellis Avenue, Chicago, IL 60615, President.
Julian B. Wilkins, 5640 South Harper Avenue, Chicago, IL 60637, Secretary, Director.
James L. Buckner, 1020 West 76th Street, Chicago, IL 60620, Director.
Dempsey J. Travis, 8001 South Champlain Avenue, Chicago, IL 60619, Director.
Milam P. Fitts, 7019 South Chappel, Chicago, IL 60649, Director.

The applicant, an Illinois corporation with its principal place of business located at 162 North State Street, Chicago, IL 60601, will begin operations with $501,000 of paid-in capital, consisting of 1,600 shares of common stock issued to Chicago Economic Development Corp. for $1,000, 2,000 shares of junior preferred stock (1,500 shares issued to Borg-Warner Corp. for $150,000 and 500 shares issued to Growth Capital, Inc., for $50,000), and 3,000 shares of senior preferred stock issued to Ford Foundation for $300,000. Chicago Economic Development Corp. is a nonprofit organization and the place of business is located at 162 North State Street, Chicago, IL.

Applicant will not concentrate its investments in any particular industry. According to the company's stated investment policy, its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Any interested person may, not later than 15 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed MESBIC. Any such communication should be addressed to the Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Chicago, Ill.

Dated: October 18, 1971.

A. H. SINGER, *Associate Administrator for Operations and Investment.*

[FR Doc.71-16081 Filed 11-3-71;8:49 am]

[License No. 05/07-0070]

COMMERCE CAPITAL CORP.

Notice of Application for Merger and Reorganization

Notice is hereby given concerning the filing of an application with the Small Business Administration (SBA) pursuant to § 107.903 of the regulations governing Small Business Investment Companies (13 CFR 107.903 (1971)) for the reorganization of Commerce Capital Corp. (Commerce), 6001 North 91st Street, Milwaukee, WI 53225, a licensed small business investment company under the Small Business Investment Act of 1958, as amended (15 U.S.C. section 661 et seq.) (the Act). Commerce is also registered as a closed-end, nondiversified management investment company under the Investment Company Act of 1940 (the 1940 Act), and is subject to the rules and regulations promulgated by the Securities and Exchange Commission (SEC) thereunder.

Commerce has entered into an agreement and plan of reorganization with Management Systems, Inc., (MSI), a corporation engaged in the leasing of data processing and related equipment, pursuant to which Commerce would acquire substantially all of the assets and business (and assume stated liabilities) of MSI in exchange for Commerce Common Stock. At the time such acquisition

is consummated, Commerce (the parent company) would transfer virtually all of its present portfolio investments, its SBA note and debenture obligations, and its name and SBIC license to a wholly owned subsidiary (New SBIC), which has been organized for that purpose and which will continue Commerce's SBIC activities as a licensed small business investment company. Thereafter, the parent-company will seek deregistration under the 1940 Act, reincorporate in Delaware, change its name to Commerce Group Corp., and initially engage in the business of leasing data processing equipment acquired through the acquisition of MSI. Officers and directors of Commerce Group Corp., will include:

Edward L. Machulak, 3629 North Knoll Terrace, Wauwatosa, WI 53222, President, Treasurer and Director.
Lawrence J. Kujawski, 5026 South 67th Street, Milwaukee, WI 53220, Vice President.
Harold Duke, Jr., 413 Monticello Drive, Ballwin, MO 63011, Vice President.
James F. McLaughlin, 3305 Harrigan Drive, Brookfield, WI 53005, Secretary.
Richard J. Boulay, 1180 Apache Trail, Brookfield, WI 53005, Assistant Secretary and Assistant Treasurer.

There will be seven directors in addition to Edward Machulak. The officers and directors of New SBIC are:

Edward L. Machulak, President, Treasurer and Director.
Lawrence J. Kujawski, Secretary and Director.
Richard J. Boulay, Assistant Treasurer.
James F. McLaughlin, Assistant Secretary and Director.

New SBIC will be a wholly owned subsidiary of Commerce Group Corp., which will have no 10 percent or more shareholders.

New SBIC will commence operations with a capitalization of approximately $2 million dollars. Its debt to SBA of $3,999,900 as of May 31, 1971, will be guaranteed by the parent company. The principal office of New SBIC will be located at 6001 North 91st Street, Milwaukee, WI 53225, current offices of Commerce. All of the foregoing is subject to the approval of SEC and SBA.

Matters involved in SBA's consideration of the application include the general business reputation and character of the parent company, as well as the management of New SBIC, and the probability of successful operations of New SBIC under such management and ownership, including adequate profitability and financial soundness, in accordance with the Act and regulations. Notice is further given that any interested person may not later than 15 days from the date of publication of this notice, submit to SBA in writing, relevant comments on the proposed transactions. Any communication should be addressed to Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Milwaukee, Wisconsin.

Dated: October 20, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-16080 Filed 11-3-71;8:48 am]

[License No. 04/05-5099]

ECCO MESBIC, INC.

Notice of Issuance of License To Operate as Minority Enterprise Small Business Investment Company

On July 10, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 13006) stating that ECCO MESBIC, Inc., 32 Broad Street, Sparta, Ga. 31087, had filed an application with the Small Business Administration, pursuant to § 107.102 of the SBA rules and regulations Governing Small Business Investment Companies (13 CFR 107.102 (1971)) for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business July 20, 1971, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 04/05-5099 to ECCO MESBIC, Inc., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: October 18, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-16082 Filed 11-3-71;8:49 am]

[License No. 02/02-0128]

NEW YORK ENTERPRISE CAPITAL CORP.

Notice of Approval of Application for Transfer of Control of Licensed Small Business Investment Company

Pursuant to the provision of § 107.701 of the Small Business Administration's (SBA) rules and regulations (13 CFR Part 107, 33 F.R. 236), a notice of filing of an application for transfer of control of New York Enterprise Capital Corp., License No. 02/02-0128, 500 Old Country Road, Garden City, NY 11530, was published in the FEDERAL REGISTER on September 16, 1971 (36 F.R. 18541).

Interested persons were given an opportunity to send their comments to SBA on the proposed transfer of control. No comments were received.

Upon consideration of the application and other relevant information, SBA hereby approves the transfer of control of New York Enterprise Capital Corp.

Dated: October 18, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-16083 Filed 11-3-71;8:49 am]

TARRANT CAPITAL CORP.

Notice of Surrender of License To Operate as Small Business Investment Company

Notice is hereby given that Tarrant Capital Corp. (Tarrant) 800 Main Street, Fort Worth, TX, a wholly owned subsidiary of Fort Worth National Bank, has, pursuant to § 107.105 of the regulations governing small business investment companies (13 CFR 107.105 (1971)), surrendered its license to operate as a small business investment company (SBIC).

Tarrant was incorporated on March 21, 1962, under the laws of the State of Texas to operate solely as an SBIC under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) (Act), and it was issued license number 10-0105 by the Small Business Administration on May 11, 1962.

Under the authority vested by the Act, and the regulations promulgated thereunder, the voluntary surrender of the license of Tarrant is hereby accepted and, accordingly, it is no longer licensed to operate as an SBIC.

Dated: October 18, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-16084 Filed 11-3-71;8:49 am]

UTAH CAPITAL CORP.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the regulations governing Small Business Investment Companies (33 CFR 107.701 (1971)) for transfer of control of the Utah Capital Corp. (Utah), 2510 South State Street, Salt Lake City, UT 84115, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. section 661 et seq.) (Act), License Number 08/11-0010.

Utah was licensed on December 29, 1961, and the present paid-in capital and paid-in surplus from all sources amounts to $152,500. The proposed transfer of control is subject to and contingent upon the approval of SBA.

In connection with a tender agreement, dated May 15, 1969, Messrs. Thomas F.

Christensen, Ray G. Whiting, Dale L. Christensen, and Richard W. Harper acquired an equal interest in 98 percent of the stock of Utah. The acquired stock was held in escrow by Valley Bank and Trust Co., pursuant to an escrow agreement dated May 1, 1969. On July 29, 1970, Mr. Thomas Christensen sold his stock interest to Mr. Gordon Sloan Smith of Eugene, Oregon. Thereafter, Messrs. Whiting, Dale Christensen, and Harper joined the R. G. Whiting Co., and transferred their stock interest to his partnership. The R. G. Whiting Co., on September 1, 1970, purchased the stock interest held by Mr. Gordon Smith. Thereafter, R. G. Whiting Co's assets and business operations were acquired by Investment Properties, Inc. (Investment).

As a result of this acquisition, Investment, an Idaho real estate company, owns a 98.36-percent interest in the common stock of Utah which as of September 29, 1971, was in the hands of Utah Agency and Register, a transfer agency, pending SBA approval of the transfer.

The principal office of the licensee will be located at 3600 Market Street, Granger, UT 84119, and a branch office will be established at 589 North Water Avenue, Idaho Falls, ID 83401.

The proposed new officers and directors are as follows:

Glenn W. McMurray, 1270 First Street, Idaho Falls, ID 83401, President and Director.
Ray G. Whiting, 985 Westchester, Idaho Falls, ID 83401, Secretary, Treasurer, and Director.
Ellwood V. Bachman, 2831 Kiesel Avenue, Ogden, UT 84401, Director.
Ephraim C. Bell, 315 Lincoln Drive, Idaho Falls, ID 83401, Director.
Wesley L. Clark, 1105 Jefferson, Idaho Falls, ID 83401, Director.
Paul Evans, Sugar City, Idaho 83448, Director.
Thomas V. Huntsman, 4544 Creek View Drive, Salt Lake City, UT 84107, Director.
Delmar R. Jamison, 498 Walnut, Idaho Falls, ID 83401, Director.
John W. Larson, Box 185, Firth, ID 83236, Director.
Dennis Q. Mortensen, 715 Saturn Avenue, Idaho Falls, ID 83401, Director.
Wanda Skousen, 200 North Nebraska, Chandler, AZ 85224, Director.
Melvin L. Smith, 179 North Milton, Shelley, ID 83274, Director.
Rodney W. Tew, Firth, Idaho 83236, Director.
Merlin J. Weekes, 3175 Midway, Idaho Falls, ID 83401, Director.
Robert H. Wilstead, 8600 South 3400 East, Sandy, UT 84020, Director.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner and management, and the probability of successful operations of the company under such management (including adequate profitability and financial soundness) in accordance with the act and regulations.

Notice is hereby given that any interested person may, not later than 15 days from the publication of this notice, submit to SBA in writing, relevant comments on the transfer of control. Any such communication should be addressed to the Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

Dated: October 18, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-16085 Filed 11-3-71;8:49 am]

DEPARTMENT OF LABOR

Office of the Secretary

WHITTIER MILLS CO.

Notice of Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of October 12, 1971, the U.S. Tariff Commission made its report of the results of its investigation (TEA-W-103) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance submitted on behalf of workers of the Whittier Mills Co. located in Atlanta, Ga. In this report, the Commission found that articles like or directly competitive with the cotton osnaburgs and sheetings produced by Whittier Mills are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of workers at the plant concerned.

Upon receipt of the Tariff Commission's affirmative finding, the Department, through the Director of Foreign Economic Policy, Bureau of International Labor Affairs, instituted an investigation. Following this, the Director made a recommendation to me relating to the matter of certification (Notice of Delegation of Authority and Notice of Investigation, 34 F.R. 18342; 36 F.R. 20268; 29 CFR Part 90). In the recommendation, he noted that imports of osnaburg and other coarse sheeting, like or directly competitive with those produced at Whittier, increased markedly from 83 million square yards in 1966 to 136 million square yards in 1970. Import penetration of the U.S. market increased from 9.7 percent in 1966 to 21.3 percent in 1970. To remain competitive, the company diversified its product line. However, the company suffered losses during 1970-71 and was forced to close the plant. Significant layoffs began the week ending May 7, 1971, and continued until the plant closed in June 1971. As of October 15, 1971, about five workers were still employed at the plant dismantling equipment. As soon as the dismantling is completed, these workers will be terminated. After due consideration, I make the following certification:

All hourly and salaried workers of the Whittier Mills Co. located at Atlanta, Ga., who became or will become unemployed or underemployed after May 3, 1971, are eligible to apply for adjustment assistance under title III, chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C., this 29th day of October 1971.

DONALD M. IRWIN,
Deputy Under Secretary, International Affairs.

[FR Doc.71-16075 Filed 11-3-71;8:48 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

NOVEMBER 1, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. At attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

RRA MC-1239, Clothing, New Deal Delivery Service, Inc., now assigned November 4, 1971, at New York, N.Y., postponed indefinitely.

MC 128698 Sub 4, Erdner Bros., Inc., now assigned November 10, 1971, at Washington, D.C., postponed to November 17, 1971, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 117940 Subs 26 and 45, Nationwide Carriers, Inc., now assigned November 15, at Washington, D.C. is canceled and applications dismissed.

MC 133327 Sub 2, Melburn Truck Lines (Toronto), LTD, now assigned November 1, 1971, at New York, N.Y., postponed indefinitely.

MC 110420 Subs 626 and 630, Quality Carriers, Inc., now assigned November 10, 1971, at Chicago, Ill., canceled and applications dismissed.

MC 123115 Sub 4, Packer Transportation Co., now assigned January 10, 1972, at Carson City, Nev., in a hearing room to be later designated.

MC 10173 Sub 12, Marvin Hayes Lines, Inc., now assigned January 10, 1972, at Nashville, Tenn., in a hearing room to be later designated.

MC 127511 Sub 6, Pratt's Dray & Storage, now assigned November 15, 1971, at Pierre, S. Dak., canceled and application dismissed.

MC-C 7384, Lovelace Truck Service, Inc., et al. v. Nussbaum Trucking now assigned January 10, 1972, at Springfield, Ill. in a hearing room to be later designated.

MC 135620, Viking Coach Lines, now assigned January 10, 1972, at Duluth, Minn., in a hearing room to be later designated.

MC 119669 Sub 18, Tempco Transportation, MC 134922 Sub 2, B. J. McAdams, now assigned November 15, 1971, at Washington, D.C., canceled and application dismissed.

MC 51146 Sub 208, Schneider Transport & Storage, Inc., assigned January 20, 1972, at Chicago, Ill.

MC 107295 Sub 504, Pre-Fab Transit Co., assigned January 21, 1972, at Chicago, Ill.
MC 109994 Sub 42, Sizer Trucking, Inc., assigned January 14, 1972, at Chicago, Ill.
MC 111729 Sub 310, American Courier Corp., assigned January 17, 1972, at Chicago, Ill.
MC 112822 Sub 187, Bray Lines, Inc., assigned January 18, 1972, at Chicago, Ill.
MC 115331 Sub 303, Truck Transport, Inc., assigned January 19, 1972, at Chicago, Ill.
MC 119619 Sub 46, Distributors Service Co., and MC 119669 Sub 19, Tempco Transportation, Inc., assigned January 13, 1972, at Chicago, Ill.
MC 119619 Sub 47, Distributors Service Co., assigned January 10, 1972, at Chicago, Ill.
MC 52460 Sub 108, Hugh Breeding, now assigned December 13, 1971, in Room 4210, Federal Courthouse and Federal Office Building, 200 NW. Fourth Street, Oklahoma City, OK.
MC-C 7411, Al Renk & Sons, Inc., and Superior Shippers Association, Inc.—Investigation and Revocation of Certificates, now assigned January 10, 1972, at Anchorage, Alaska, in a hearing room to be later designated.
MC 113434 Sub 44, Gra-Bell Truck Line, Inc., assigned January 10, 1972, at Chicago, Ill., also MC 118263 Sub 44, Coldway Carriers, Inc.
MC 128273 Sub 91, Midwestern Express, Inc., assigned January 17, 1972, at Chicago, Ill.
MC 133652 Sub 3, Winkoma, Inc., assigned January 14, 1972, at Chicago, Ill.
MC 135154 Sub 1, Badger Lines, Inc., assigned January 11, 1972, at Chicago, Ill.
MC 135318, Grane Trucking Co., Inc., assigned January 13, 1972, at Chicago, Ill.
MC 135415, Schmidt Transit Co., Inc., assigned January 12, 1972, at Chicago, Ill.
MC 120761 Sub 2, Newman Bros. Trucking Co., assigned January 10, 1972, at Austin, Texas, in a hearing room to be designated later.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16147 Filed 11-3-71;8:54 am]

[Sec. 5a Application No. 33; Amdt. 7]

CENTRAL STATES MOTOR COMMON CARRIERS AGREEMENT

Notice of Receipt of Application for Approval

OCTOBER 19, 1971.

The Commission is in receipt of an application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed September 14, 1971 by: H. A. Welty, attorney-in-fact, John W. McFadden, Jr., attorney for applicants, 5440 South Cicero Avenue, Chicago, IL 60638.

The amendments involve: Revision of article XII (regular procedure) to permit the Standing Rate Committee to refer directly to the Central Committee for hearing and disposition proposals relating to general revisions or general increases in rates and charges, or changes in rules or regulations; add a new section 7, article XII, requiring individual members to take independent action from publication of general increases (flagouts) within 7 dates of notice of recommended final disposition, in lieu of the present 15-day period; specifically provide for publication of notice of independent action proposals (article XIV); and make other incidental changes made necessary by the foregoing changes.

The complete application may be inspected at the Office of the Commission in Washington, D.C.

Any person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of publication of this notice in the FEDERAL REGISTER. As provided by the General Rules of Practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigation and determine the matters involved without public hearing.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16144 Filed 11-3-71;8:53 am]

[No. 35478]

AMERON, INC.

Petition for Declaratory Order

OCTOBER 20, 1971.

Notice is hereby given that on August 25, 1971, Ameron, Inc., with principal place of business at Monterey Park, Calif., filed a petition for a declaratory order under section 554(e) of the Administrative Procedure Act, finding that certain products shipped by petitioner are "light poles" and not "lamp posts", both as more fully described in the petition. It is stated in the petition that the National Classification Board advised inquiring carriers that petitioner's products were lamp posts, and that, as a consequence, higher classification ratings were applied.

Any person interested in the subject matter of the petition may, on or before 30 days from the publication of this notice in the FEDERAL REGISTER, file replies to the petition, supporting or opposing the determination sought. An original and 15 copies of such replies must be filed with the Commission and must show service of two copies each upon the following registered practitioner representing petitioner herein: Mr. Peter Steele Labagh, 582 Market Street, Room 1207, San Francisco, CA 94104. Thereafter, the Commission will determine the nature of further proceedings, if any.

Notice, pursuant to statutory requirements, of the filing of the petition will be given by publication hereof in the FEDERAL REGISTER, and a copy will be posted in the Office of the Secretary of the Commission for public inspection. The petition is also available for inspection.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16149 Filed 11-3-71;8:54 am]

[S.O. 1080; Amdt. 1]

NEW ENGLAND FORWARDING CO., INC.

Authorization To Operate Through Halifax, Nova Scotia, and Other Canadian Ports

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of October 1971.

Upon further consideration of Service Order No. 1080 (36 F.R. 20467), and good cause appearing therefor:

It is ordered, That pursuant to sections 1(16) and 420 of the Interstate Commerce Act, 49 U.S.C. 1(16) and 1020, Service Order No. 1080 be, and it is hereby amended by extending the expiration date thereof from 11:59 p.m., October 31, 1971, to 11:59 p.m., November 20, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

It is further ordered, That copy of this amendment shall be served upon New England Forwarding Co., Inc., and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16151 Filed 11-3-71;8:54 am]

[No. 35233]

KANSAS CITY SOUTHERN RAILWAY CO. AND LOUISIANA AND ARKANSAS RAILWAY CO.

Notice of Investigation Into Management, Business Interrelationships and Transactions

At a General Session of the Interstate Commerce Commission, held at its offices in Washington, D.C., on the 26th day of October, 1971.

Investigation into the management, business interrelationships and transactions of the Kansas City Southern Railway Co. and the Louisiana and Arkansas Railway Co. in relation to their controlling holding company, Kansas City Southern Industries, Inc. and persons under a common control with the carriers.

Upon consideration of the order of the Commission, dated June 26, 1970, instituting this proceeding and directing the Bureau of Enforcement to participate as a party therein; of our order dated October 15, 1971, scheduling hearings and prescribing procedures for the further conduct of this investigation; of a petition for reconsideration of said order of October 15, filed October 22, 1971, by the respondents named in said order of June 26; of the Bureau of Enforcement's

reply to the petition; and of other pertinent matters of record:

It appearing, that by the order of October 15, the Bureau of Enforcement is required to file its direct evidence in the form of verified statements on October 26, 1971, and a hearing before an examiner is scheduled for December 6, 1971, for the purpose of receiving further direct evidence by the Bureau and by intervenors, if any, and for cross-examination of witnesses whose direct evidence has by that time been presented; and that such piecemeal presentation of evidence with the requirement of immediate cross-examination on December 6, would not, in the circumstances of this investigation, be fair to the respondents or in the interest of good order;

It further appearing, that the respondents herein should be apprised of substantially the entire case in chief being presented against them before being called upon for cross-examination and rebuttal, and should be given a reasonable time for preparation of their cross-examination and rebuttal;

It further appearing, that the order of June 26 provides for the taking of depositions and issuance of subpenas duces decum in advance of the oral hearing, and, in the interest of expedition, either process to be with or without notice; and that upon its own motion, the Commission, considering these efforts at expedition to be unduly prejudical to the cause of fairness, concludes that neither subpenas should be issued nor depositions taken herein without due notice being given;

It further appearing, that in view of the Bureau's preparations enabling it to present its extensive evidence on this date, the circumstances warrant that the Bureau's evidence derived from subpoenas and depositions be presented on or before November 30, 1971, and in consideration thereof, the oral hearing now scheduled for December 6, 1971, should be postponed until a later date to be hereafter designated:

It is ordered, That the order of October 15, 1971, be, and it is hereby, amended in the following particulars:

That the Bureau of Enforcement be required to present on or before November 30, 1971, the evidence arising out of such subpoenas as it may obtain and such depositions as it may take, the filing and service to be in the manner and form as was prescribed for the evidence filed on this date; and

That the oral hearing scheduled for December 6, 1971, be postponed until a date hereafter to be designated.

It is further ordered, That the order of June 26, 1970, be, and it is hereby, amended to require that due and reasonable notice be given of requests for subpoenas and of the taking of depositions.

It is further ordered, That, except to the extent modified in the preceding ordering paragraphs, the orders of June 26, 1970, and October 15, 1971, shall remain in full force and effect.

And it is further ordered, That except to the extent relief is granted in the preceding ordering paragraphs, the petition of the respondents filed October 22, 1971, be, and it is hereby, denied.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16148 Filed 11-3-71;8:55 am]

[No. MC-C-7599]

TRAVENOL LABORATORIES, INC.

Notice of Filing of Petition for Institution of Rulemaking Proceeding Regarding Investigation of Protective Service

OCTOBER 29, 1971.

Petitioner: Travenol Laboratories, Inc., 200 Wilmot Road, Deerfield, IL 60015. Petitioner's representative: Thomas G. Baranski, Registered Practitioner. By petition filed September 20, 1971, petitioner seeks institution of a rule making proceeding for the purpose of investigating the practices of motor common carriers with respect to providing protective services and, in particular, for answering the question of whether protective service (not refrigerated service) is a required duty of a general commodities motor common carrier.

Petitioner is a producer of pharmaceutical supplies (including intravenous solutions), most of which are packaged in glass. Petitioner asserts that general commodities carriers have historically handled such products both in the summer and winter months, the latter service being provided to the best of the carriers' ability at no additional charges. Petitioner contends that each year more and more carriers are refusing to handle these products during the winter months, claiming, among other things, that they do not have the equipment available; that they handle single-line traffic only; that they will not accept freezable shipments on Thursday or Friday; or that they simply do not desire the business.

Petitioner further maintains that unofficial embargoes have been placed on freezable commodities. It maintains specifically that carriers in the Detroit, Mich., area embargoed freezables between December 19, 1969, and January 5, 1970, and that they continued acceptance on an erratic basis only throughout January 1970. Petitioner further maintains that in many parts of the country it is required to remove its request for protective service from a bill of lading and ship at its own risk in order to have urgently needed medical supplies moving during cold weather periods.

In support of its petition, petitioner submits as exhibits (1) the National Classification Board's "Proposal for Change in the National Motor Freight Classification" form, containing question 7(p) to the effect of "Does commodity require heat _____, refrigeration _____?", (2) correspondence with the Michigan Public Service Commission allegedly reflecting futile attempts to secure protective service within Michigan, (3) the Eastern Central Motor Carrier Docket, allegedly indicating that protective service will not be provided unless the carrier agrees to provide such service, (4) several bills of lading demonstrating the shipper's risk in shipping freezables, and (5) a letter from a carrier demonstrating difficulties in obtaining protective service.

Petition asks that the Commission investigate the practices, only, and not the charges, of motor common carriers with respect to providing protective service. It raises the tariff issue only to demonstrate that certain rate conferences intend to furnish protective service only at the carrier's option. In conclusion, petitioner argues that motor common carriers' willingness to transport the involved type of commodities during the summer months and unwillingness to handle the same commodities during the winter months, under the same certificate of public convenience and necessity, is a violation of the principles established in Ex Parte No. MC-77, *Restrictions On Service By Motor Common Carriers,* 111 M.C.C. 151 (1970).

Any interested person desiring to participate shall file an original and seven copies of his written representations, views, and arguments in support of, or against, the petition within 30 days from the date of publication in the FEDERAL REGISTER. A copy of such representations should be served upon petitioner at the address indicated above.

Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16027 Filed 11-2-71;8:51 am]

[Notice 775]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 1, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73180. By order of October 28, 1971, the Motor Carrier Board, on reconsideration, approved the transfer to Robert F. Zapora, doing business as R. F. Zapora Motor Trans., Hooksett, N.H., of the operating rights in certificates Nos. MC-34930, MC-34930 (Sub-No. 18), and MC-34930 (Sub-No. 22),

issued October 23, 1961, June 6, 1960, and February 16, 1968, to Prue Motor Transportation, Inc., Dover, N.H., authorizing the transportation of petroleum products, in bulk, in tank trucks, from Portland and South Portland, Maine, to points in that part of New Hampshire bounded by a line beginning at Portsmouth and extending along U.S. Highway 4 to the Connecticut River, thence along the Connecticut River to Haverhill, thence along New Hampshire Highway 25 to the New Hampshire-Maine State line, thence along the New Hampshire-Maine State line to point of beginning, including points on U.S. Highway 4, not including points on New Hampshire Highway 25; and from Portsmouth and Newington, N.H., to specified points in Maine; aviation gasoline and jet fuel, in bulk, in tank vehicles, from Brunswick and Harpswell, Maine, to Pease Air Force Base, Portsmouth and Newington, N.H., and Grenier Air Force Base, Manchester, N.H., and gasoline, in bulk, from South Portland, Maine, to Exeter and New Market, N.H.

Norman H. Stahl, 1838 Elm Street, Manchester, NH 03105, and Kenneth B. Williams, 111 State Street, Boston, MA 02109, attorneys for applicants.

No. MC-FC-73212. By order of October 28, 1971, the Motor Carrier Board approved the transfer to Independent Motor Transport, Inc., Albany, Oreg., of the operating rights in certificate No. MC-115067 (Sub-No. 3) issued June 5, 1970, to Clarence D. Spencer, Jr., and Louise M. Spencer, a partnership, doing business as Independent Motor Transport, Albany, Oreg., authorizing the transportation of used household goods, between points in Linn and Benton Counties, Oreg. Frederick L. Decker, 135 West Fifth Avenue, Post Office Box 516, Albany, OR 97321, attorney for applicants.

No. MC-FC-73237. By order of October 28, 1971, the Motor Carrier Board approved the transfer to Stephen J. Dautcher and Stephen J. Dautcher, Jr., a partnership, doing business as Read's Van Service, Hatboro, N.J., of the operating rights in certificate No. MC-30581 issued September 9, 1949, to Stephen J. Dautcher and Warren Thomas, a partnership, doing business as Read's Van Service, Hatboro, N.J., authorizing the transportation of household goods, as defined by the Commission, between Philadelphia, Pa., and points within 15 miles thereof, on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, Delaware, and Maryland. James A. Cassel, 512 Swede Street, Norristown, PA 19401, attorney for transferor. Harry J. Liederbach, 539 Street Road, Southampton, PA, attorney for transferee.

No. MC-FC-73240. By order of October 29, 1971, the Motor Carrier Board approved the transfer to Yellow Coach Lines, Inc., Bristol, Va., of the operating rights in certificate No. MC-108963 issued June 30, 1965, to Fuller Bus Line, Inc., Bristol, Va., authorizing the transportation of passengers and their baggage, and express, newspapers, and mail in the same vehicle with passengers, between Bristol, Va.-Tenn., and Saltville, Va., between Abingdon, Va., and Damascus, Va., between Cedarville, Va., and Meadow View, Va., and between junction U.S. Highway 11 and Virginia Highway 609 and Glade Spring, Va., serving all intermediate points. Cecil D. Quillen, Gate City, Va. 24251, attorney for applicants.

No. MC-FC-73271. By order of October 29, 1971, the Motor Carrier Board approved the transfer to Donald K. Vines, doing business as Don Vines Trucking, Los Angeles, Calif., of a portion of the operating rights in certificate No. MC-118127 issued July 29, 1965, to Hale Distributing Co., Inc., Montebello, Calif., authorizing the transportation of specified commodities from points in California to Phoenix, Ariz. Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027, representative for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16145 Filed 11-3-71;8:54 am]

[Notice 775-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER, 1, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73136. By order of October 20, 1971, the Commission, Division 3, approved the transfer to Thomas J. Cerep, Scranton, Pa., of that portion of the operating rights in certificate No. MC-57591 (Sub-No. 4) issued June 2, 1969, to Evans Delivery Co., Inc., Pottsville, Pa., authorizing the transportation of household goods between Ashland, Pa., and points within 25 miles of Ashland, on the one hand, and, on the other, points in Pennsylvania, Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York, and the District of Columbia. James J. Powell, 700 Mears Building, Scranton, Pa. 18503, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16146 Filed 11-3-71;8:54 am]

[Notice 88]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

OCTOBER 29, 1971.

The following applications are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER, issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall be meet the requirements of § 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's General Policy Statement Concerning

[1] Copies of Special Rule 1100.247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Motor Carrier Licensing Procedures, published in the FEDERAL REGISTER, issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record.

The publications hereinafter set forth reflect the scope of the applications as filed by applicants, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

No. MC 531 (Sub-No. 274), filed September 24, 1971. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Post Office Box 14048, Houston, TX 77021. Applicant's representative: Wray E. Hughes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Transformer oil*, in bulk, in tank vehicles and *collapsible containers*, when moving in the same time and on the same vehicle with the transformer oil, from the plantsite of Gulf Oil Co.-U.S., located at West Port Arthur, Tex., to points in Idaho, Indiana, Michigan, Minnesota, Montana, North Dakota and South Dakota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex.

No. MC 8600 (Sub-No. 26), filed September 28, 1971. Applicant: WERNER CONTINENTAL, INC., 2500 West County Road C, St. Paul, MN 55113. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the plantsite of PPG Industries, Inc., at or near Mount Holly Springs, South Middleton Township, Cumberland County, Pa., as an off-route point in connection with carrier's authorized regular route operations to and from Pittsburgh, Harrisburg, and Philadelphia, Pa., New York, N.Y., and Baltimore, Md. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh or Harrisburg, Pa.

No. MC 8948 (Sub-No. 97), filed September 13, 1971. Applicant: WESTERN GILLETTE, INC., 2550 East 28th Street, Mail: Post Office Box 58267, Los Angeles, CA 90058, Vernon Station. Applicant's representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between Reno, Nev., and Kansas City, Mo.: From Reno, Nev., over Interstate Highway 80 (including temporary Interstate Highway 80) to junction U.S. Highway 34 at or near Lincoln, Nebr., thence over U.S. Highway 34 to junction U.S. Highway 75 at or near Union, Nebr., thence over U.S. Highway 75 to junction U.S. Highway 136 at Auburn, Nebr., thence over U.S. Highway 136 to junction U.S. Highway 59 at Tarkio, Mo., thence over U.S. Highway 59 to junction Interstate Highway 29, thence over Interstate Highway 29 to Kansas City, Mo., and return over the same route; (2) between Reno, Nev., and Springfield, Ill., serving Springfield Ill., for purposes of joinder only: From Reno, Nev., over Interstate Highway 80 (including temporary Interstate Highway 80) to junction U.S. Highway 34 at or near Lincoln, Nebr., thence over U.S. Highway 34 to junction U.S. Highway 75 at or near Union, Nebr., thence over U.S. Highway 75 to junction U.S. Highway 136 at Auburn, Nebr., thence over U.S. Highway 136 to junction U.S. Highway 59 at Tarkio, Mo., thence over U.S. Highway 59 to junction Interstate Highway 29, thence over Interstate Highway 29 to junction U.S. Highway 36 at St. Joseph Mo., thence over U.S. Highway 36 to Springfield, Ill., and return over the same route;

(3) Between Kansas City, Mo., and Springfield, Ill., serving Springfield, Ill., for purposes of joinder only: (a) From Kansas City, Mo., over Interstate Highway 70 to junction U.S. Highway 54 at or near Kingdom City, Mo., thence over U.S. Highway 54 to junction U.S. Highway 36 approximately 4 miles west of Pittsfield, Ill., thence over U.S. Highway. 36 to Springfield, Ill., and return over the same route, (b) from Kansas City, Mo., over Interstate Highway 35 to junction U.S. Highway 36 at or near Cameron, Mo., thence over U.S. Highway 36 to Springfield, Ill., and return over the same route; (4) between Reno, Nev., and Joliet, Ill., serving Joliet, Ill., for purposes of joinder only: From Reno, Nev., over Interstate Highway 80 (including temporary Interstate Highway 80) to Joliet, Ill., and return over the same route; and (5) between Kansas City and St. Louis, Mo.: From Kansas City, Mo., over Interstate Highway 70 to St. Louis, Mo., and return over the same route. Restriction: All of the foregoing service is restricted to traffic moving to, from, or through either Reno, Nev., or points in Oklahoma. Routes (1) through (5) are alternate routes for operating convenience only, in connection with carrier's regular route operations. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 13123 (Sub-No. 62), filed September 28, 1971. Applicant: WILSON FREIGHT COMPANY, a corporation, 3636 Follett Avenue, Cincinnati, OH 45223. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of PPG Industries, Inc., at or near Mount Holly Springs, South Middleton Township, Cumberland County, Pa., as an off-route point in connection with carrier's authorized regular route operations to and from Pittsburgh, Harrisburg, and Philadelphia, Pa., New York, N.Y., Baltimore, Md., and the District of Columbia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Harrisburg or Pittsburgh, Pa.

No. MC 20861 (Sub-No. 2), filed October 7, 1971. Applicant: FROZEN FOOD BUYERS' SERVICE, INC., 308 Randal Road, Berlin, MA 01503. Applicant's representative: Frederick T. O'Sullivan, 372 Granite Avenue, Milton, MA 02186. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen food concentrates* in tin cans, from Taunton and Southborough, Mass., to points in New York, New Jersey, Pennsylvania, Vermont, Washington, D.C., Maryland, Connecticut, Rhode Island, and New Hampshire; and (2) *tin cans*, from Jamesburg, N.J., and Levittown, Pa., to Taunton, Mass., under contract with Newton Foods, Inc., of Taunton, Mass. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 27817 (Sub-No. 97), filed September 21, 1971. Applicant: H. C. GABLER, INC., Rural Delivery No. 3, Chambersburg, PA 17201. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carnivorous animal feed*, in packages, from the plant and warehouse facilities of Kal Kan Food, Inc., at Columbus, Ohio, to points in Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont, Virginia, West Virginia, Maryland, Tennessee, Kentucky, Delaware, North Carolina, South Carolina, and the District of Columbia; and (2) *materials and supplies* used in manufacture, sale, and distribution of carnivorous animal feed (except in bulk), from points in the United States (except Alaska and Hawaii), to the plantsite and warehouse facilities of Kal Kan Food, Inc., at Columbus, Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 34227 (Sub-No. 10), filed October 8, 1971. Applicant: PACIFIC INLAND TRANSPORTATION COMPANY, a corporation, 15 South Broadway, Cortez, CO 81321. Applicant's representative: David R. Parker, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*,

by motor vehicle, over irregular routes, transporting: *Hides, skins, and pieces thereof,* from Friona and Plainview, Tex., to points in California, Oregon, Washington, and the international boundary line at or near Blaine, Wash., under contract with Missouri Beef Packers, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or Denver, Colo.

No. MC 55581 (Sub-No. 24), filed October 5, 1971. Applicant: UTAH PACIFIC TRANSPORT COMPANY, a corporation, 1891 West 2100 South Street, Salt Lake City, UT 84119. Applicant's representative: David J. Lister (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Forest products, lumber, and lumber mill products,* from points in Washington and Oregon to points in California and Nevada. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif., or Portland, Oreg.

No. MC 59640 (Sub-No. 25), filed October 1, 1971. Applicant: PAULS TRUCKING CORPORATION, 3 Commerce Drive, Cranford, NJ 07016. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, NJ 07102. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses and in connection therewith, *equipment materials, and supplies* used in the conduct of such business, between Woodbridge Township and Cranford, N.J., on the one hand, and, on the other, points in Hartford and Middlesex Counties, Conn., and Hampden County, Mass. Restriction: The authority sought herein is limited to a transportation service to be performed under a continuing contract, or contracts with Supermarkets General Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 60106 (Sub-No. 2), filed October 12, 1971. Applicant: RICHMOND BEACH FUEL AND TRANSFER, INC., Post Office Box 4, Richmond Beach, WA. Applicant's representative: George R. LaBissonier, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Wine and alcoholic beverages,* from St. Helena, Oakville, Saratoga, Fresno, Guerneville, Modesto, Lodi, Livermore, Sonoma, and San Francisco, Calif., on the one hand, to points in King, Kitsap, Pierce, and Snohomish Counties, Wash., on the other hand for the account of Sid Eland, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 61403 (Sub-No. 214), filed October 6, 1971. Applicant: THE MASON AND DIXON TANK LINES, INC., Eastman Road, Post Office Box 969, Kingsport, TN 37662. Applicant's representative: W. C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Weed killing compounds* in bulk, in tank vehicles, from Le Moyne, Ala., to Marysville and Salem, Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 61592 (Sub-No. 246), filed October 4, 1971. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Flour, bakery goods, mix, icing powder, and frosting mix,* from Chelsea, Mich., to points in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Virginia, Pennsylvania, New York, New Jersey, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 61592 (Sub-No. 247), filed October 8, 1971. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Jack Davis, 1100 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Shakes, shingles, and ridge trim,* (1) from ports of entry on the United States-Canada boundary line at or near Blaine, Sumas, Oroville, and Port Angeles, Wash., to points in Oregon, Washington, California, Nevada, and Arizona; (2) from points in Washington on and west of U.S. Highway 97 to points in California, Nevada, and Oregon; and (3) from points in Oregon on and west of U.S. Highway 97 to points in California, Nevada, and Arizona. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 64994 (Sub-No. 115), filed September 27, 1971. Applicant: HENNIS FREIGHT LINES, INC., Post Office Box 612, Winston-Salem, NC 27102. Applicant's representative: B. M. Shirley, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Greenville, S.C., and Augusta, Ga.; from Greenville over U.S. Highway 25 to Augusta, and return over the same route; (2) between Columbia, S.C., and Charleston, S.C.; from Columbia over Interstate Highway 26 to Charleston, and return over the same route; (3) between junction U.S. Highway 25E and U.S. Highway 11W and Hillsville, Va.; from junction U.S. Highway 25E and U.S. Highway 11W over U.S. Highway 11W to junction Interstate Highway 81, thence over Interstate Highway 81 to junction U.S. Highway 52, thence over U.S. Highway 52 to Hillsville, and return over the same route; (4) between junction U.S. Highway 25E and U.S. Highway 11W and Christianburg, Va.; from junction U.S. Highway 25E and U.S. Highway 11W over U.S. Highway 11W to junction Interstate Highway 81, thence over Interstate Highway 81 to Christianburg, and return over the same route; (5) between junction U.S. Highway 21 and U.S. Highway 60 and Roanoke, Va.; from junction U.S. Highway 21 and U.S. Highway 60 over U.S. Highway 60 to Clifton Forge, Va., thence over U.S. Highway 220 to Roanoke, and return over the same route; (6) between junction U.S. Highway 460 and Virginia Highway 307 and junction Virginia Highway 307 and U.S. Highway 360; from junction U.S. Highway 460 and Virginia Highway 307 over Virginia Highway 307 to junction U.S. Highway 360, and return over the same route;

(7) Between Petersburg, Va., and Portsmouth, Va.; from Petersburg over U.S. Highway 460 to Portsmouth, and return over the same route; (8) between Richmond, Va., and Portsmouth, Va.; from Richmond over U.S. Highway 301 to junction Virginia Highway 10, thence over Virginia Highway 10 to Benns Church, Va., thence over Virginia Highway 32 to junction U.S. Highway 17, thence over U.S. Highway 17 to Portsmouth, and return over the same route; (9) between Pittsburgh, Pa., and Rich Creek, Va.; from Pittsburgh over U.S. Highway 19 (also over U.S. Highway 22 to junction Interstate Highway 79, thence over Interstate Highway 79) to Morgantown, W. Va., thence over West Virginia Highway 92 to Elkins, W. Va., thence over U.S. Highway 219 to Rich Creek, and return over the same route; (10) between Pittsburgh, Pa., and Roanoke, Va.; from Pittsburgh over U.S. Highway 19 (also over U.S. Highway 22 to junction Interstate Highway 79, thence over Interstate Highway 79) to Morgantown, W. Va., thence over West Virginia Highway 92 to Elkins, W. Va., thence over U.S. Highway 219 to junction Interstate Highway 64, thence over Interstate Highway 64 to Clifton Forge, Va., thence over U.S. Highway 220 to Roanoke, and return over the same route; (11) between Cincinnati, Ohio and Corbin, Ky.; from Cincinnati over Interstate Highway 75 to Corbin, and return over the same route; (12) between Fort Wayne, Ind., and Cincinnati, Ohio; from Fort Wayne over U.S. Highway 27 to Cincinnati, and return over the same route; and (13) between Richmond, Ind., and Cincinnati, Ohio; from Richmond over U.S. Highway 27 to Cincinnati, and return over the same route. NOTE: The above routes (1) through (13) are all

alternate routes for operating convenience only, in connection with applicant's authorized regular route operations, serving no intermediate points. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 66753 (Sub-No. 6), filed September 20, 1971. Applicant: CHAIN HAULAGE, INC., 15 Hastings Road, Lexington, MA 02173. Applicant's representative: Frank J. Weiner, 6 Beacon Street, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses and in connection therewith, *equipment, materials, and supplies* used in the conduct of such business (except in bulk, in tank vehicles), from Marlboro, Mass., to points in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, and New Jersey; returned or damaged shipments of the above-described commodities, from the above-described destination points to Marlboro, Mass., under a continuing contract or contracts with Stop & Shop, Inc. NOTE: No duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 72442 (Sub-No. 36), filed October 4, 1971. Applicant: AKERS MOTOR LINES, INCORPORATED, Post Office Box 579, Gastonia, NC 28052. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, tobacco, liquor, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission), serving the plantsite of PPG Industries, Inc., at or near Holly Springs, Pa., as an off-route point in connection with applicant's authorized regular route authority. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 77972 (Sub-No. 19), filed October 1, 1971. Applicant: MERCHANTS TRUCK LINE, INC., 100 Summer Street, Post Office Box 908, New Albany, MS 38652. Applicant's representative: Donald B. Morrison, 717 Deposit Guaranty National Bank Building, Post Office Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Forest and Jackson, Miss.: From Forest over U.S. Highway 80 and/or Interstate Highway 20 to Jackson, and return over the same route, serving all intermediate points. NOTE: Applicant states it proposes to join the above-requested authority with its present authority at Forest, Miss. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss., and Memphis, Tenn.

No. MC 94201 (Sub-No. 98), filed October 5, 1971. Applicant: BOWMAN TRANSPORTATION, INC., 1010 Stroud Avenue, Gadsden, AL 35903. Applicant's representative: John P. Carlton, 327 Frank Nelson Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the plantsite of the General Tire and Rubber Co., at or near Mayfield, Ky., on the one hand, and, on the other, points in Alabama, Florida, Georgia, Indiana, North Carolina, South Carolina, and Tennessee; all points in that part of Illinois on and bounded by a line beginning at the Illinois-Indiana State line and extending along U.S. Highway 36 to Springfield, Ill., thence along Illinois Highway 29 to Peoria, Ill., thence along Illinois Highway 116 to Metamora, Ill., thence along Illinois Highway 89 to junction U.S. Highway 34, thence along U.S. Highway 34 to Chicago, Ill., thence along Lake Michigan to the Illinois-Indiana State line, and thence along the Illinois-Indiana State line to point of beginning; all points in that part of Ohio on, west, and north of a line beginning at a point on the Ohio-Pennsylvania State line near Sharon, Pa., and extending along U.S. Highway 62 to Columbus, Ohio, thence along U.S. Highway 23 to Circleville, Ohio; and thence along U.S. Highway 22 to Cincinnati, Ohio, Richmond, Va., Washington, D.C., Baltimore, Md., Wilmington, Del., Philadelphia, Pa., and New York, N.Y. NOTE: Applicant states that the requested authority can be tacked with its authority under MC 94201 Subs 52 and 53, wherein applicant is authorized to serve points in New York, Connecticut, New Jersey, Massachusetts, and Rhode Island. Applicant also proposes to tack with the authority under lease from C. Rickard & Sons, Inc., at New York, N.Y. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 95540 (Sub-No. 823), filed September 24, 1971. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL 33801. Applicant's representative: Paul E. Weaver (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery products*, from points in Kent County, Mich., to points in Washington, Oregon, and Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Detroit, Mich.

No. MC 100666 (Sub-No. 200), filed October 12, 1971. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life, 3535 Northwest 58th, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, materials and supplies* used in the manufacture or distribution of paper and paper products (except commodities in bulk), between the plantsites and/or storage facilities of Nekoosa Edwards Paper Co., Inc., in Little River County, Ark., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 100666 (Sub-No. 201), filed October 5, 1971. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Center, 3535 Northwest 58th, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* from Hill City, S. Dak., to points in Arkansas, Oklahoma, and Texas. NOTE: Applicant states that the requested authority could be tacked with its existing authority under MC 100666 Sub 1 and serve Louisiana; tack with its Sub 53 in Arkansas and serve points in Alabama and Tennessee; and, tack with its Sub 58 in Arkansas and serve Mississippi. If a hearing is deemed necessary, applicant requests it be held at Pierre, S. Dak., or Denver, Colo.

No. MC 103993 (Sub-No. 672), filed October 4, 1971. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Kay County, Okla., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tulsa, Okla.

No. MC 103993 (Sub-No. 673), filed October 12, 1971. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Ohio to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 103993 (Sub-No. 674), filed October 12, 1971. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, designed to be drawn by passenger automobiles, campers, camp coaches, and motor homes*, in initial movements, in truckaway service, from points in Kossuth County, Iowa, to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa.

No. MC 103993 (Sub-No. 675), filed October 12, 1971. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel floor systems and component parts*, from points in Elkhart County, Ind., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify location.

No. MC 106644 (Sub-No. 129), filed October 1, 1971. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., Post Office Box 916, Atlanta, GA 30301. Applicant's representative: Duane W. Acklie, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soil pipe and fittings, valves, hydrants, meter boxes, and accessories*, from Anniston and Holt, Ala., to points in Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, east of the Mississippi River; Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. NOTE: Applicant has pending an application in No. MC 104724 Sub-No. 13 for contract carrier authority, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority cannot be tacked with its existing authority. No duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Atlanta, Ga.

No. MC 106674 (Sub-No. 82), filed October 1, 1971. Applicant: SCHILLI MOTOR LINES, INC., Post Office Box 122, Delphi, IN 46923. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared roofing materials and commodities* used or useful in the construction of roofs (except commodities in bulk), from the plantsite of Phillip Carey Corp. at Wilmington, Ill., to points in Indiana, restricted to traffic originating at said plantsite and destined to the named destination State. NOTE: Applicant states that the restricted authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107012 (Sub-No. 129), filed October 4, 1971. Applicant: NORTH AMERICAN VAN LINES, INC., Lincoln Highway East and Meyer Road, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis, Post Office Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper products, cellulose wrapping, cellulose bags, and cellulose pads*, from Salem, Ill., to Benton, Ark. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107496 (Sub-No. 826), filed September 29, 1971. Applicant: RUAN TRANSPORT CORPORATION, Keosauqua Way at Third, Post Office Box 855, Des Moines, IA 50304. Applicant's representative: H. L. Fabritz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Phosphoric acid*, in bulk, from Lawrence, Kans., to points in Arkansas, Nebraska, Iowa, Oklahoma Kentucky, North Dakota Mississippi, Missouri, Colorado, Montana, and Wyoming; (2) *phosphate*, in bulk, from Lawrence, Kans., to points in Texas; (3) *petroleum products*, from Meredosia, Ill., to points in Missouri and Iowa; (4) *liquid fertilizer*, in bulk, in tank vehicles, from West Fargo, and Grand Forks, N. Dak., to points in North Dakota, South Dakota, and Minnesota; (5) *liquid food and liquid animal food supplements*, in bulk, in tank vehicles, from the plantsite of Phillips Petroleum Co., located at or near Audubon, Iowa, to points in Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota; (6) *dry sand*, in bulk from points in St. Louis County, Mo., to Salem, Ill.; (7) *plastic pellets and liquid lates*, in bulk, from Marseilles, Ill., to points in Michigan, Missouri, Kansas, Colorado, Utah, Tennessee, Wisconsin, Ohio, Idaho, Washington, Oregon, California, Texas, Minnesota, West Virginia, Alabama, Kentucky, and Indiana; and (8) *core oil*, in bulk, from Milwaukee, Wis., to points in Ohio, Michigan, and Iowa. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intentions to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Chicago, Ill.

No. MC 108053 (Sub-No. 103), filed October 4, 1971. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., Post Office Box 129, Fremont, NE 68025. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen prepared foods and frozen meats and canned goods*, from St. James, Madelia, and Butterfield, Minn., and Estherville, Iowa, to points in California, Oregon, Washington, Colorado, Arizona, Idaho, Montana, and Salt Lake City, Utah. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 108393 (Sub-No. 52), filed September 29, 1971. Applicant: SIGNAL DELIVERY SERVICE, INC., 930 North York Road, Hinsdale, IL 60521. Applicant's representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of electrical and gas appliances, and equipment, materials, and supplies* used in the manufacture, distribution, and repair of electrical and gas appliances, from Goshen, Ind., to St. Joseph, Mich., and Clyde, Marion, and Findlay, Ohio, under continuing contract or contracts with Whirlpool Corp. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 108449 (Sub-No. 333), filed October 8, 1971. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Applicant's representative: Adolph J. Bieberstein, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, from points in Milwaukee County, Wis., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 109564 (Sub-No. 12) (Correction), filed September 20, 1971, published FEDERAL REGISTER, issue of October 29, 1971 and republished in part as corrected this issue. Applicant: LYONS TRANSPORTATION LINES, INC., 1701 Parade Street, Erie, PA 16512. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. NOTE: The purpose of this partial republication is to show the correct Docket No. MC 109564 (Sub-No. 12) in lieu of MC 109564 (Sub-No. 42) and also to show the correct filing date as September 20, 1971, in lieu of October 20, 1971, as was erroneously shown in previous publication. The rest of the application remains as previously published.

No. MC 110525 (Sub-No. 1016), filed October 4, 1971. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from the plantsite of Mobay Chemical Co., Chambers County, Tex., to points in the United States (except Alaska and Hawaii), restricted to shipments originating at Mobay Chemical Co.'s plantsite, Chambers County, near Baytown, Tex. (Harris County). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 110525 (Sub-No. 1017), filed October 7, 1971. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Applicant's representative: Thomas J. O'Brien (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, from the plantsite and storage facilities of Monsanto Co. at or near Everett, Mass., to points in Connecticut, Maine, New Hampshire, New York, Vermont, Ohio, Pennsylvania, and Rhode Island, restricted to the transportation of shipments originating at the named plantsite and storage facilities and destined to points in the named destination points. NOTE: Applicant states that no duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Washington, D.C.

No. MC 111401 (Sub-No. 349), filed October 4, 1971. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Road, Enid, OK 73701. Applicant's representative: Alvin L. Hamilton (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Transformer oil*, in bulk, in tank vehicles, and *collapsible containers* when moving at the same time and on the same vehicle with the transformer oil, from the plantsite of Gulf Oil Co.-United States, located at West Port Arthur, Tex., to points in Idaho, Indiana, Michigan, Minnesota, Montana, North Dakota, and South Dakota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 111956 (Sub-No. 26), filed September 28, 1971. Applicant: SUWAK TRUCKING COMPANY, a corporation, 1105 Fayette Street, Washington, PA 15301. Applicant's representative: John A. Vuono, 3310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the plantsite of PPG Industries, Inc., at or near Mount Holly Springs, South Middleton Township, Cumberland County, Pa., on the one hand, and, on the other, points in Maryland and Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh or Harrisburg, Pa.

No. MC 113678 (Sub-No. 439), filed October 5, 1971. Applicant: CURTIS, INC., Post Office Box 16004, Stockyards Station, Denver, CO 80216. Applicant's representatives: Duane W. Acklie and Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Downingtown, Lancaster, and Philadelphia, Pa., to points in California, Oregon, Washington, Arizona, New Mexico, Texas, Nebraska, Colorado, and Utah. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Denver, Colo.

No. MC 113843 (Sub-No. 175), filed September 27, 1971. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Applicant's representative: Lawrence T. Sheils (same address as above), Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Utica, Mich., to points in Ohio, Indiana, Kentucky, Illinois, Iowa, Wisconsin, Minnesota, Missouri, Kansas, and Nebraska. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 114004 (Sub-No. 110), filed October 4, 1971. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, AR 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles and *buildings*, in sections, mounted on wheeled undercarriages, in initial movements, from points in Noble County, Ohio, to points in the United States, including Alaska, but excluding Hawaii. NOTE: Applicant states that the requesting authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 114004 (Sub-No. 111), filed October 4, 1971. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, AR 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles and *buildings*, in sections, mounted on wheeled undercarriages, in initial movements, from points in Butts County, Ga., to points in the United States, including Alaska, but excluding Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 114019 (Sub-No. 225), filed October 4, 1971. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, IL 60629. Applicant's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molasses*, in bulk, in tank vehicles, from Hamilton, Ohio, to Beloit, Wis. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 115557 (Sub-No. 9), filed October 1, 1971. Applicant: CHARLES A. McCAULEY, Rural Delivery No. 3, 308 Leasure Way, New Bethlehem, PA 16242. Applicant's representative: H. Ray Pope, Jr., 10 Grant Street, Clarion, PA 16214. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dynamic loud speakers* (in and not in cabinets), *and component parts, iron and steel stampings*, from Du Bois, Pa., to points in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with

its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 117956 (Sub-No. 8), filed August 18, 1971. Applicant: HUGH H. SCOTT, doing business as SCOTT TRANSFER CO., 920 Ashby Street, SW., Atlanta, GA 30310. Applicant's representative: William Addams, 1776 Peachtree Street NW., Suite 527, Atlanta, GA 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, and commercial paper*, between Cornelia and Clarkesville, Ga., on the one hand, and, on the other, points in Cherokee, Clay, Swain, and Jackson Counties, N.C. NOTE: Applicant states that the requested authority can be tacked with its existing authority under MC 117956 (Sub-No. 5), but does not identify the points or territories which can be served through tacking. Applicant also holds contract carrier authority under MC 116947 and subs, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 114211 (Sub-No. 162), filed October 4, 1971. Applicant: WARREN TRANSPORT, INC., 324 Manhard, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wallboard, fiberboard, pulpboard, adhesive cement, plastic and fiberglass plate and sheets, nails, eave filler strips, wood moldings, and aluminum flashing*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the above described commodities, between Bergen County, N.J., on the one hand, and, on the other, points in the United States (including Alaska but excluding Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant does not seek any duplicating authority for the purpose of sale or otherwise. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 116519 (Sub-No. 15), filed October 8, 1971. Applicant: FREDERICK TRANSPORT LIMITED, Rural Route 6, Chatham, ON, Canada. Applicant's representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Feed and feed ingredients*, between points in Michigan, Ohio, Indiana, Illinois, and New York, and ports of entry on the international boundary line between the United States and Canada located along the Niagara Frontier and the Detroit and Saint Clair Rivers; (B) *grain, forest products, and horticultural commodities*, between ports of entry on the international boundary line between the United States and Canada located along the Detroit and Saint Clair Rivers and points in Michigan and Ohio; and (C) *wood chips and bark chips, peat moss, stone chips, and marble chips*, between points in the United States (except Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Hawaii, Oregon, Utah, Washington, and Wyoming), and ports of entry on the international boundary line between the United States and Canada located along the Niagara Frontier and the Detroit and Saint Clair Rivers, restricted to foreign commerce transportation only, and to traffic originating at or destined to points in the Province of Ontario, Canada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 117565 (Sub-No. 48), filed October 1, 1971. Applicant: MOTOR SERVICE COMPANY, INC., Route 3, Post Office Box 448, Coshocton, OH 43812. Applicant's representative: Louis J. Amato, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural floor supports, tubular products, anchor bolts and accessories thereof*, from Seville, Ohio, to points in Minnesota, Iowa, and States east of the Mississippi River. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus or Cleveland, Ohio.

No. MC 118292 (Sub-No. 25), filed October 4, 1971. Applicant: BALLENTINE PRODUCE, INC., Box 312, Alma, AR 72921. Applicant's representative: Nancy Pyeatt, 1030 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods and dog food*, from the plantsites and warehouse facilities of Allen Canning Co. at Alma, Van Buren, Gentry, Siloam Springs, and a point approximately 10 miles east of Siloam Springs, Ark., and Proctor and Kansas, Okla., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Missouri, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack, and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Washington, D.C.

No. MC 118518 (Sub-No. 5), filed September 20, 1971. Applicant: MUKLUK FREIGHT LINES, INC., Box 3-1427, Anchorage, AK 99501. Applicant's representative: Joseph W. Sheehan, Box 2551, Fairbanks, AK 99501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission), (1) between ports of entry on the international boundary line between the United States and Canada located at or near Blaine and Sumas, Wash., and Seattle, Wash.; and (2) between Blaine and Sumas, Wash., on the one hand, and, on the other, points in Alaska except those in the Alaska Panhandle south of Haines, Alaska. NOTE: Applicant states that the requested authority will be joined with its Alaska authority, both that which it presently holds and is seeking through transfer proceedings before the Commission, and it seeks to tack and join the sought authority at all points on the Alaska border, except those in the Alaska Panhandle south of Haines, Alaska. If a hearing is deemed necessary, applicant requests it be held at Anchorage or Fairbanks, Alaska.

No. MC 119669 (Sub-No. 27), filed September 27, 1971. Applicant: TEMPCO TRANSPORTATION, INC., 546 South 31A, Columbus, Ind. 47201. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Lexington, Ky., to points in Ohio, Pennsylvania, New York, Massachusetts, Connecticut, Rhode Island, New Jersey, Delaware, Maryland, Virginia, West Virginia, Michigan, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119670 (Sub-No. 20), filed September 27, 1971. Applicant: THE VICTOR TRANSIT CORPORATION, Post Office Box 115, Winton Place Station, Cincinnati, OH 45232. Applicant's representative: Robert H. Kinker, Post Office Box 464, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, in containers and related *advertising material*, from Cincinnati, Ohio, to points in Indiana, Kentucky, West Virginia, and the Lower Peninsula of Michigan; and (2) *empty malt beverage containers and pallets*, from points in Indiana, Kentucky, West Virginia, and the Lower Peninsula of Michigan, to Cincinnati, Ohio. NOTE: Applicant states that requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cincinnati or Columbus, Ohio.

No. MC 119777 (Sub-No. 226), filed October 8, 1971. Applicant: LIGON SPECIALIZED HAULERS, INC., Post Office Drawer L, Highway 85 East, Madisonville, KY 42431. Applicant's representative: William G. Thomas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bleachers and grandstands, steel or wood, knocked down, and tables*, from the plantsite of American Bleacher Corp., Baton Rouge, La., to points in the United States (except Alaska and Hawaii). NOTE: Applicant holds contract carrier authority under MC 129670, therefore dual operations and common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Jackson, Miss.

No. MC 119792 (Sub-No. 32), filed October 4, 1971. Applicant: CHICAGO SOUTHERN TRANSPORTATION COMPANY, a corporation, 1401 West 43d Street, Chicago, IL 60609. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal briquets*, from the plantsite of Chuckwagon Briquets, Inc., located 3 miles northwest of Morton, Minn., to points in Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 119988 (Sub-No. 45), filed October 5, 1971. Applicant: GREAT WESTERN TRUCKING CO., INC., Highway 103 East, Post Office Box 1384, Lufkin, TX 75901. Applicant's representative: Bennie W. Haskins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cups*, from the plantsite or warehouse of Carthage Cup Co., Inc., at or near Carthage, Tex., to points in Kansas; and (2) *dishes, plates, or trays, paper pulpboard, or woodpulp* nested, from the plantsite or warehouse of Holiday Plates, Inc., at or near Gladewater, Tex., to point in Kansas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas or Houston, Tex.

No. MC 123255 (Sub-No. 15), filed October 1, 1971. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, OH 43055. Applicant's representative: C. F. Schnee, Jr., 140 Everett Avenue, Newark, OH 43055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food*, from Bowling Green, Ohio, to points in Indiana, Illinois, and the Lower Peninsula of Michigan. NOTE: applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract carrier authority under MC 8196 and subs, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 123407 (Sub-No. 95), filed October 12, 1971. Applicant: SAWYER TRANSPORT, INC., 2424 South Minnehaha Avenue, Minneapolis, MN 55404. Applicant's representative: Robert W. Sawyer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used lumber and used construction forms and parts thereof*, between points in Illinois, Wisconsin, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Wyoming, Tennessee, Mississippi, Alabama, Georgia, Florida, and Louisiana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 126548 (Sub-No. 11), filed October 1, 1971. Applicant: ELMER A. FEHRLE, doing business as FEHRLE TRUCKING, 2329 18th Street SW., Cedar Rapids, IO 52404. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, IO 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Air pollution control equipment, parts and accessories*, from Waterloo, Iowa to points in the United States (except Alaska and Hawaii), under contract with Ace Incinerator Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Des Moines, Iowa.

No. MC 127283 (Sub-No. 5), filed September 27, 1971. Applicant: SILICA SAND TRANSPORT, INC., Routes 47 and 71, Post Office Box 208, Yorkville, IL 60560. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Silica sand*, from Wedron, Ill.; Glen Rose, Tex.; Sewanee, Tenn.; Emmett, Idaho; and Lake Majella, Calif., to points in the United States (except Alaska and Hawaii), under contract with Wedron Silica Co. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or San Francisco, Calif.

No. MC 127840 (Sub No. 27), filed October 8, 1971. Applicant: MONTGOMERY TANK LINES, INC., 612 Maple Street, Willow Springs, IL 60480. Applicant's representative: William H. Towle, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Witch hazel*, in bulk, from Essex, Conn., to points in Illinois, Michigan, and Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 128273 (Sub-No. 107), filed October 1, 1971. Applicant: MIDWESTERN EXPRESS, INC., Box 189, Fort Scott, KS 66701. Applicant's representative: Danny Ellis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, products produced or distributed by manufacturers and converters of paper and paper products; materials and supplies used in the manufacture and distribution of the foregoing commodities* (except commodities which, because of size or weight, require the use of special equipment and commodities in bulk), between Middletown, Ohio, and points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 128273 (Sub-No. 109), filed October 8, 1971. Applicant: MIDWESTERN EXPRESS, INC., Box 189, Fort Scott, KS 66701. Applicant's representative: Danny Ellis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, produced or distributed by manufacturers and *converters of paper and paper products; materials and supplies* used in the manufacture and distribution of the foregoing commodities (except commodities which, because of size or weight, require the use of special equipment and commodities in bulk), between Lockport, La., on the one hand and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Washington, D.C.

No. MC 128497 (Sub-No. 11), filed September 27, 1971. Applicant: JACK LINK TRUCK LINE, INC., Post Office Box 127, Dyersville, IA 52040. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite and storage facilities utilized by Wilson Sinclair Co., located at Des Moines, Iowa, to

points in Indiana, Michigan, and Ohio, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. NOTE: Applicant holds contract authority under MC 124807, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 128497 (Sub-No. 12), filed September 27, 1971. Applicant: JACK LINK TRUCK LINE, INC., Post Office Box 127, Dyersville, IA 52040. Applicant's representative: Jack H. Blanshan, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Tama Corp. at or near Tama, Iowa, to points in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. It holds contract authority under MC 124807, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 129972 (Sub-No. 3), filed October 12, 1971. Applicant: GERALD D. WRIGHT, 1303 10th Street SE., Jamestown, ND 58401. Applicant's representative: Thomas J. Van Osdel, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages or alcoholic liquors* (except beer or malt beverages and commodities in bulk), from Mont La Salle, Lac Jac Station, Reedley, Lodi, Menlo Park, St. Helena, and Saratoga, Calif.; Chicago, Peoria, and Pekin, Ill.; Lawrenceburg, Ind.; Allen Park, Mich.; Duluth, Minn.; Louisville, Ky.; and Philadelphia, Pa., to Bismarck, Fargo, and Grand Forks, N. Dak. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary applicant requests it be held at Fargo, N. Dak., or Minneapolis, Minn.

No. MC 129974 (Sub-No. 4), filed August 20, 1971. Applicant: THOMPSON BROS., INC., Post Office Box 457, Toronto, SD 57268. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Twine*, from New Orleans, La., Houston, Tex., and Milwaukee, Wis., to points in Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South of the facilities of common carriers by (2) and when in trucking equipment transporting twine from New Orleans, La., Houston, Tex., and Milwaukee, Wis.; between points in Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming, under contract with Paul Dee Co., Marshalltown, Iowa. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Des Moines, Iowa.

No. MC 134323 (Sub-No. 19), filed October 7, 1971. Applicant: JAY LINES, INC., 720 North Grand Street, Amarillo, TX 79105. Applicant's representative: Duane Acklie, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts* as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsites and storage facilities of Swift Fresh Meats Co. at Clovis, N. Mex., and Guymon, Okla., to points in Maine, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, and the District of Columbia, under contract with Swift & Co., Chicago, Ill., restricted to shipments originating at the above-named plantsites and storage facilities and destined to points in the above-named States. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 135118 (Sub-No. 2), filed October 12, 1971. Applicant: MACKLIN MOVING & STORAGE, INC., 842 Champion Street, Lemoore, CA 93245. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Used household goods;* and (2) *unaccompanied baggage*, between points in Fresno, Kings, and Tulare Counties, Calif. Restriction: The service proposed to be authorized herein is restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 135529 (Sub-No. 4), filed October 6, 1971. Applicant: COOK TRANSPORTS, INC., 303 East Orleans Street, Box 153, Paxton, IL 60957. Applicant's representative: Charles R. Young, 4 West Seminary Street, Danville, IL 61832. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bags, from Danville, Ill., to points in Indiana, Kentucky, Nebraska, Missouri, Ohio, Michigan, Wisconsin, Minnesota, and Iowa. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Springfield or Chicago, Ill.

No. MC 135608 (amendment), filed May 10, 1971, published in the FEDERAL REGISTER, issue of June 10, 1971, and republished in part, as amended, this issue. Applicant: INMAN TRANSPORT, INC., Post Office Box 666, Inman, SC 29349. Applicant's representative: Edward G. Villalon, Suite 1032, Pennsylvania Building, Pennsylvania Avenue and 13th Street N.W., Washington, DC 20004. NOTE: The sole purpose of this partial republication is to add to part (3) the cities of Bartow and Orlando, Fla., Spartanburg, S.C., Philadelphia, Pa., and North Bergen, N.J., as origin points; add to part (6) the cities of Baltimore, Md., and Atlanta, Ga., as origin points; and to reflect Mr. Edward G. Villalon as applicant's representative in lieu of Mr. Frank A. Graham, Jr., as originally shown. The rest of the application remains as previously published.

No. MC 135753 (Sub-No. 1), filed October 12, 1971. Applicant: WILLIAM TRANSPORT COMPANY, INC., 1815 High Point Avenue, Richmond, VA 23230. Applicant's representative: Roderick B. Mathews, 1200 Mutual Building, Richmond, Va. 23219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which because of size or weight require the use of special equipment or handling (except bulk commodities in tank vehicles and building materials and construction equipment), between points in Virginia, under contract with Stone and Webster Engineering Corp., agent for Virginia Electric & Power Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Richmond or Charlottesville, Va.

No. MC 135760 (Sub-No. 1), filed October 6, 1971. Applicant: COAST REFRIGERATED TRUCKING CO., INC., Post Office Box 188, Holly Ridge, NC 28445. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pork products*, in vehicles equipped with mechanical refrigeration, between points in New Hanover and Onslow Counties, N.C., on the one hand, and, on the other, points in the United States (except Hawaii and Alaska), under a continuing contract (or contracts) with Carolina Meat Processors, Inc., of Wilmington, N.C. NOTE: If a hearing is deemed necessary, applicant requests it be held at Raleigh, N.C., or Washington, D.C.

No. MC 135778 (Sub-No. 1), filed October 8, 1971. Applicant: RONALD E. McLEOD, Rural Route No. 2, Ashland, IL 62612. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds, and animal and poultry feed ingredients*, between Beardstown, Ill., on the one hand,

and, on the other, points in Indiana, Iowa, and Missouri, under contract with Kent Feeds, Inc. NOTE: If a hearing is deemed necessary applicant requests it be held at Springfield, Ill., St. Louis, Mo., or Chicago, Ill.

No. MC 135795 (Sub-No. 1), filed October 1, 1971. Applicant: WILLIAM J. JAMES, doing business as BILL JAMES, 541 Willow Lane, Hereford, TX 79045. Applicant's representative: Mert Starnes, The 904 Lavaca Building, Post Office Box 2207, Austin, TX 78767. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feeds*, from Hereford, Tex., to points in Oklahoma, New Mexico, Kansas, and Colorado, under a continuing contract with Moorman Manufacturing Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Amarillo, Lubbock, or Austin, Tex.

No. MC 135833 (Sub-No. 5), filed October 7, 1971. Applicant: B & C SPECIALIZED CARRIERS, INC., 6524 Brookville Road, Indianapolis, IN 46219. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed concrete products and materials, equipment, and supplies* used in the installation and erection thereof, from Junction City and Champaign, Ill., to points in Indiana, Kentucky, Ohio, Michigan, Minnesota, Missouri, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Indianapolis, Ind.

No. MC 135992, filed August 24, 1971. Applicant: HIGGINS TRUCKING, LIMITED, Chipman, New Brunswick, Canada. Applicant's representative: Orville Higgins (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal briquetts and other commodities* of Atlantic Forest Products, Ltd., from points of entry on the international boundary line between the United States and Canada located at or near Houlton, Maine, to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey, and *rejected or refused shipments*, on return, under continuing bilateral contract with Atlantic Forest Products, Ltd. NOTE: If a hearing is deemed necessary, applicant requests it be held at Portland, Maine.

No. MC 136051 (Sub-No. 1), filed October 1, 1971. Applicant: RPD, INC., 2701 South Bayshore Drive, Miami, FL 33133. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts, components, materials, supplies, advertising materials, and equipment, materials, and supplies* utilized in the manufacture thereof, between points in Florida on and east of the Jackson-Calhoun-Liberty and Wakulla County lines and points in Appling, Atkinson, Bacon, Berrien, Brantley, Brooks, Camden, Charlton, Clinch, Coffee, Colquitt, Cook, Decatur, Echols, Glynn, Grady, Lanier, Lowndes, McIntosh, Pierce, Seminole, Thomas, Ware, and Wayne Counties, Ga., under contract with General Motors Corp. (General Motors Parts Division). NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Jacksonville or Tallahassee, Fla.

No. MC 136063, filed September 24, 1971. Applicant: ROBERT BYNUM, 504 Miller Street, Clarksville, AR 72830. Applicant's representative: Don Langston, Court House Building, Fort Smith, Ark. 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from points in Johnson County, Ark., to Clarksville, Ark., and the Arkansas River Port at New Spadra, Johnson County, Ark., restricted to traffic with a subsequent movement by rail or water. NOTE: If a hearing is deemed necessary, applicant requests it be held at Clarksville, Ark., Fort Smith, Ark., or Little Rock, Ark.

No. MC 136066 (Sub-No. 1), filed September 30, 1971. Applicant: G. P. SULLIVAN COMPANY, a corporation, 2000 South Western Avenue, Chicago, IL 60608. Applicant's representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, Mich. 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise of J. C. Penney Co., Inc.*, sold at retail from their stores and warehouses in Chicago, Elk Grove Village, and Waukegan, Ill., to the residences and places of business of retail customers in points in Kenosha, Walworth, and Racine Counties, Wis., with return of *rejected, repossessed, damaged, exchanged, or trade-in merchandise*, restricted to service to be performed under a continuing contract with J. C. Penney Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Lansing, Mich.

No. MC 136074, filed October 1, 1971. Applicant: L. H. WHITTEN, Box 203, Claysburg, PA 16625. Applicant's representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, between Portage, New Germany, Glen Hope, Mount Union, and Ebensberg, Pa., and Oakland, Md., on the one hand, and, on the other, points in Indiana, Kentucky, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, Virginia, and that part of Tennessee on and east of Interstate Highway 65, under a continuing contract or contracts with Ellsworth A. Van Sickle, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. MC 136075, filed October 1, 1971. Applicant: EL SEIS DE MAYO EXPRESS, INC., 791 East 149th Street, Bronx, New York, NY 10455. Applicant's representative: Jose Ramon Torres, 261 Broadway, Suite 610, New York, NY 10007. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods and personal effects*, between points in the New York, N.Y., commercial zone wherein operations are exempt from economic regulations. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 136078, filed October 1, 1971. Applicant: E. B. LAW AND SON, INC., Post Office Drawer 1360, Las Cruces, NM 88001. Applicant's representative: William J. Lippman, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mine roof expansion shells*, from El Paso, Tex., to Kansas City, Mo., and points in Arizona, New Mexico, and West Virginia; and (2) *bolts* intended for installation in mine roofs, from Kansas City, Mo., to points in Arizona and New Mexico, under a continuing contract with Frank Investment Company of El Paso, Tex. NOTE: Applicant holds common carrier authority under MC 106278 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at El Paso, Tex., or Albuquerque, N. Mex.

No. MC 136082, filed October 8, 1971. Applicant: DESERT VALLEY MOVING & STORAGE, INC., 842 Champion Street, Lemoore, CA 93245. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods and unaccompanied baggage*, between points in Fresno, Kings, and Tulare Counties, Calif., restricted to the transportation of traffic having a prior or subsequent movement in containers beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 136087, filed October 8, 1971. Applicants: JAMES E. CHELF, WILLIAM F. SHARP, JR., ALVIN C. ELLIOTT, AND LOY GENE COKER, a partnership, doing business as JIM CHELF AND ASSOCIATES, 5226 Brighton Boulevard, Denver, CO 80216. Applicant's representative: John J. Conway, 946 Metropolitan Building, 1612 Court Place, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone and telegraph equipment, materials and supplies*, between points in Colorado,

Idaho, Montana, Utah, Wyoming, New Mexico, and Arizona, under contract with Mountain States Telephone & Telegraph Co.-Mountain Bell. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

MOTOR CARRIER OF PASSENGERS

No. MC 3647 (Sub-No. 435), filed October 4, 1971. Applicant: TRANSPORT OF NEW JERSEY, a corporation, 180 Boyden Avenue, Maplewood, NJ 07040. Applicant's representative: Richard Fryling (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Flemington and East Amwell, N.J.: From Flemington, N.J., over U.S. Highway 202 (also known as New Jersey Highway 31) to junction of U.S. Highway 202 and New Jersey Highway 31, East Amwell, N.J., and return over the same route, serving all intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 3647 (Sub-No. 436), filed October 4, 1971. Applicant: TRANSPORT OF NEW JERSEY, a corporation, 180 Boyden Avenue, Maplewood, NJ 07040. Applicant's representative: Richard Fryling (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express, and newspapers* in the same vehicle with passengers, (1) between Ridgefield Park and Teaneck, N.J., from the junction U.S. Highway 46 and Interstate Highway 95 (New Jersey Turnpike), Ridgefield Park, N.J., over Interstate Highway 95 to the junction of De Graw Avenue, Teaneck, N.J., and return over the same route, serving all intermediate points; (2) between Hackensack and Teaneck, N.J., from junction Hudson and Kennedy Streets, Hackensack, N.J., over Kennedy Street and access roads to Interstate Highway 80, thence over Interstate Highway 80 to junction Interstate Highway 95, Teaneck, N.J., and return over the same route, serving all intermediate points; and (3) between Bogota and Teaneck, N.J., from junction Palisade Avenue and East Main Street, Bogota, N.J., over East Main Street to junction of De Graw Avenue, Teaneck, N.J., thence over De Graw Avenue to junction of Teaneck Road, Teaneck, N.J., and return over the same route serving all intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 70947 (Sub-No. 23) (Correction), filed August 27, 1971, published FEDERAL REGISTER, issue of October 21, and republished in part as corrected in this issue. Applicant: MT. HOOD STAGES, INC., doing business as PACIFIC TRAILWAYS, 1068 Bond Street, Bend, OR 97701. Applicant's representative: Raymond D. Givens, 500 Washington Street, Box 94, Boise, ID 83701. NOTE: The purpose of this partial republication is to reflect the Docket No. MC 70947 (Sub-No. 23), in lieu of MC 90974 (Sub-No. 23) which was erroneously shown in the previously publication. The rest of the application remains as previously published.

No. MC 106170 (Sub-No. 12), filed October 1, 1971. Applicant: THE GRAY LINE SCENIC TOURS, INC., doing business as CALIFORNIA-NEVADA GOLDEN TOURS, 1675 Mill Street, Post Office Box 1051, Reno, NV 89505. Applicant's representative: Bertram S. Silver, 140 Montgomery Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special and charter operations, beginning and ending at San Francisco and Sacramento, Calif., and points in Alameda, San Mateo, Contra Costa, and San Joaquin Counties, Calif., and extending to points in Douglas, Washoe, and Storey Counties, Nev., and Carson City, Nev. This application is accompanied with a motion to dismiss. NOTE: If a hearing is deemed necessary, applicant requests it be held at Reno, Nev., Carson City, Nev., or San Francisco, Calif.

No. MC 113567 (Sub-No. 4), filed October 6, 1971. Applicant: LA CROSS AND WESTERN STAGES, INC., doing business as HIAWATHA COACHES, 2022 Oak Street, La Crosse, WI 54601. Applicant's representative: J. G. Dail, Jr., 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, in the same vehicle with passengers, in one-way and round-trip charter operations, and in one-way and round-trip special operations consisting of sightseeing and pleasure tours, beginning or ending at points in Buffalo, Crawford, Jackson, Juneau, La Crosse, Monroe, Richland, Sauk, Trempealeau, and Vernon Counties, Wis., and Filmore, Goodhue, Houston, Mower, Wabasha, and Winona Counties, Minn., and extending to points in the United States (except Hawaii). NOTE: Applicant states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at La Crosse, Wis.

No. MC 134542 (Sub-No. 5), filed September 14, 1971. Applicant: QUICKLIVICK, INC., 708 C Street, Staunton, VA 24401. Applicant's representative: Earl F. Quick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, (a) from junction of Virginia Highway 42 and U.S. Highway 250 at Churchville, Va., over Virginia Highway 42 to Bridgewater, Va.; (b) from Timberville, Va., to Woodstock, Va., over Virginia Highway 42; (c) from junction of Virginia Highway 42 and Virginia Highway 623 at Columbia Furnace, Va., over Virginia Highway 623 to junction of Virginia Highway 623 and Virginia Highway 55 near Lebanon Chuch, Va.; and (d) from junction of Virginia Highway 628 and Virginia Highway 55 at Lebanon Church, Va., to Winchester, Va., over Virginia Highway 628, and return over the same routes serving all intermediate points, except restricted to no service between Woodstock, Va., and Winchester, Va. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Winchester, Va.

APPLICANT FOR FILING FREIGHT FORWARDER

No. FF-67 (Sub-No. 1) (IMPORT FREIGHT CARRIERS, INC.—Extension—Indiana, etc.), filed October 18, 1971. Applicant: IMPORT FREIGHT CARRIERS, INC., 2800 West 38th Street, Chicago, IL 60632. Applicant's representative: H. Neil Garson, Court Square West Building, 1400 North Uhle Street, Arlington, VA 22201. Authority sought under section 410, part IV of the Interstate Commerce Act, for a permit to extend operation as a freight forwarder, in interstate or foreign commerce, through use of the facilities of common carriers by railroad, and motor carrier and water carrier, in the transportation of: *General commodities*, from all ports and points of import in the United States, when moving from points outside the continental limits of the United States and Canada to points in Indiana, and Illinois (except those in Indiana and Illinois in the Chicago, Il., commercial zone as defined by the Commission), Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin, and Texas.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-16016 Filed 11-3-71;8:45 am]

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PART II

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

■

PROCESSOR WHEAT MARKETING CERTIFICATE REGULATIONS

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

PART 777—PROCESSOR WHEAT MARKETING CERTIFICATE REGULATIONS

The following republication of Part 777 of Title 7 of the Code of Federal Regulations is issued to include all amendments to date (33 F.R. 14676; 34 F.R. 5817, 6907, 11412, 13522, 19063; 35 F.R. 11689; 36 F.R. 7657, and 11019). This republication of Part 777 contains minor editorial corrections, but does not include any substantive changes.

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Interpretations.

AUTHORITY: The provisions of this Part 777 issued under secs. 379a to 379j, 52 Stat. 31, as amended by 76 Stat. 626, 78 Stat. 178, and 79 Stat. 1202; 7 U.S.C. 1379 a–j.

§ 777.1 General.

The Agricultural Adjustment Act of 1938, as amended, provides that all persons engaged in the processing of wheat into food products shall, with certain exceptions, prior to marketing any such food products or removing such food products for sale or consumption, acquire domestic wheat marketing certificates equivalent to the number of bushels of wheat contained in such products. The act also provides that upon the giving of a bond or other undertaking satisfactory to the Secretary of Agriculture to secure the purchase of and payment for such marketing certificates as may be required, and subject to such regulation as he may prescribe, any person required to have marketing certificates in order to market the food product may be permitted to market any such product without having acquired marketing certificates in advance. The regulations in this part contain the terms and conditions for implementing these and related requirements of law.

§ 777.2 Administration.

The regulations in this part will be administered by the Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS") under the general supervision of the Administrator, ASCS. The Commodity Credit Corporation (hereinafter referred to as "CCC") will assist in carrying out the regulations through the sale and purchase of domestic certificates. Information pertaining to the regulations in this part may be obtained from the Director, Grain Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20250.

§ 777.3 Definitions.

As used in the regulations in this part and in all instructions, forms, and documents pertaining hereto, the words and phrases defined in this section shall have the meaning assigned to them as follows, unless the context or subject matter otherwise requires:

(a) "Wheat" means wheat (regardless of whether produced in the United States), as defined in the Official Grain Standards of the United States or any wheat contained in any mixed grain or in any other mixture, which if not contained in such mixture would qualify as wheat under such standards.

(b) "Food product" means:

(1) Any product processed in whole or in part from wheat, irrespective of whether such product is actually used for human consumption, except such products as are defined herein as non-food products. Such food products shall, except as provided in paragraph (c)(3) of this section, include but not be limited to the following:

(i) Flour, as defined herein. (See §§ 777.18 and 777.19 for special provisions on flour second clears which are not used for human consumption.)

(ii) Wheat which is boiled, steeped, or commercially sprouted.

(iii) Any breakfast cereal.

(iv) Any beverage.

(v) Cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or such other similarly processed wheat as may be designated by the Administrator, except to the extent that the total product of the wheat processed is used in or marketed as animal feed or other nonfood product. To qualify as ground wheat not more than 70 percent of such total product shall pass through a No. 8 sieve, and not more than 30 percent of such total product shall pass through a No. 20 sieve.

(c) "Non-food product" means:

(1) Any of the following products when produced in a single plant from wheat, provided (i) none of the products obtained from the wheat used in the processing of such product is marketed, or removed from the plant for sale or consumption, as a food product, (ii) the product is not manufactured from only a part of the total flour streams obtained in the processing of patent flours, and (iii) the product is labeled or otherwise identified as a non-food product.

(a) Animal feed;

(b) Pet food and poultry feed;

(c) Adhesives and other industrial products unsuitable for human consumption;

(d) Any product marketed or removed from the plant for use as a component of the products listed in subdivisions (a), (b), or (c) of this subparagraph if such product is unsuitable for marketing as a food product because of ingredients added or other action taken during the total course of processing.

(2) Cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or other similarly processed wheat designated by the Administrator to the extent that the total product of the wheat processed is used in or marketed as animal feed or other non-food product specified in this paragraph.

(3) Any product which prior to marketing or removal for sale or consumption (whichever occurs first) is determined to be unfit for human consumption by the Food and Drug Administration or any agency of a State or local government, has not been rendered unfit for human consumption by deliberate action on the part of the processor and is destroyed or disposed of for animal feed or other non-food use; or any product processed from wheat determined to be unfit for human consumption by any such agency, if the product is destroyed or disposed of for animal feed or other non-food use.

(4) Any product being manufactured from wheat as a food product which becomes unsuitable for marketing as the food product originally intended to be produced provided the conditions prescribed in subdivisions (i) and (ii) of this subparagraph are met.

(i) The loss is the result of (a) power failure, (b) strike, (c) fire, (d) Act of God, or (e) any unforseen circumstance which, upon application of the processor, is specifically approved in writing by the Director.

(ii) Such product and all other products obtained from the wheat are destroyed or prior to marketing or removal from the plant (whichever occurs first) are rendered unsuitable for marketing as a food product and are used in or marketed as animal feed or other nonfood products specified in this paragraph.

This subparagraph (4) does not, unless the loss is the result of circumstances described in subdivision (i) of this subparagraph, cover undercooked or overcooked products; screenings or other

residue from cleaning the wheat; dust; fines; floor sweepings or spillage collected in the processing plant; or any loss resulting from choke-up, starting up or shutting down processing operations.

(5) Such other products processed from wheat as the Administrator may determine to be non-food products.

(d) "Flour" means all flour (including flour clears) processed in whole or in part from wheat and shall include whole wheat or graham flour, Durum flour, malted wheat flour, stone ground flour, self-rising flour, semolina, farina and bulgur.

(e) "Person" means an individual, corporation, partnership, association, State, State agency, municipality or any other legal entity.

(f) "Food processor" means any person who processes wheat into a food product, irrespective of whether or not his principal business activity is that of a food processor. An individual who processes wheat in his own home for family use in his home is not a food processor.

(g) A "plant" or "processing plant" means collectively all processing units under one roof or located adjacent to each other except that (1) any such unit or units producing animal feed or other nonfood product exclusively shall be considered a separate plant, (2) any such unit or units processing durum wheat exclusively may be considered a separate plant, (3) any such unit in which beverage distilled spirits are placed in barrels for aging shall be considered a separate plant, (4) any such unit in which flour second clears are used in the manufacture of products which are not used for human consumption shall be considered a separate plant, and (5) any such unit in which cereal products are produced may be considered a separate plant. (6) Any such unit in which further processing of the food product first derived from the wheat occurs shall not be considered a part of the plant (for example, a bakery located in the same building or adjacent to a processing plant). The blending of a food product with another product or any other ingredient is not considered further processing for the purpose of this subparagraph (6). In the case of cereal processors where a food product is processed in a continuous operation from wheat which has been pearled or otherwise semiprocessed in the same plant location, all such processing units collectively shall be considered a plant.

(h) "United States" means all the States in the United States, the District of Columbia and Puerto Rico, including any Free Trade zones located therein.

(i) "Bushel" means 60 pounds of wheat, exclusive of dockage as defined in the Official Grain Standards of the United States or 60 pounds of wheat which is contained in mixed grain or in any mixture.

(j) "Domestic certificate" or "certificate" means a Form CCC-145, Wheat Marketing Certificate (domestic) issued by CCC, or a certificate credit established by CCC in its accounts in favor of a food processor for certificates purchased pursuant to these regulations.

(k) "Marketing year" means the twelve months beginning July 1, and ending June 30.

(l) "Director" means the Director, Grain Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, or his designee.

(m) "Commodity office" means the Kansas City ASCS Commodity Office, 8930 Ward Parkway, P.O. Box 205, Kansas City, Missouri 64141.

(n) [Reserved]

(o) "Administrator" means the Administrator, ASCS, or his designee.

(p) "GR-262" means "Announcement GR-262, Terms and Conditions of Contracts for the Acquisition of CCC wheat for Export as Wheat Flour", under which wheat is acquired from CCC for exportation in the form of flour pursuant to a barter transaction, or Export Credit Announcement GSM-1, or any other program under which CCC offers wheat at competitive world prices for export in the form of flour.

(q) "GR-346" means the regulations with respect to the "CCC Flour Export Program—Cash Payment, GR-346" (33 F.R. 15633, and any amendments thereto) under which export payments may be made on flour exports at announced payment rates.

(r) "State or State Agency" means any of the fifty states in the United States, the District of Columbia and Puerto Rico, and any agency thereof.

(s) "Institution" means an organization operating primarily as a charitable or religious institution which provides assistance on a charitable or welfare basis to needy persons and which, for the purpose of these regulations, has been approved in writing by the Administrator as an institution to which the food processor may deliver food products for distribution by donation to needy persons without acquiring certificates, or if the institution is a food processor, which may remove food products from the plant for donation to needy persons without acquiring certificates. Any institution which wishes to apply for such approval shall submit a request in writing to the Administrator specifying its name and address, and describing its activities, including the purpose for which the food products will be used. Such institution must be recognized by the Internal Revenue Service as an institution to which contributions are deductible as charitable contributions for Federal income tax purposes under section 170 of the Internal Revenue Code (26 U.S.C. 170) as evidenced by the listing of such organization in the U.S. Treasury Department's Internal Revenue Service Publication No. 78, "Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954," as revised and supplemented.

(t) [Reserved]

(u) "Flour second clears", means a coproduct of patent flours (including Durum patent flour) which is produced in a 72 percent extraction rate type of milling operation in the United States from wheat produced in the United States and which meets the requirements of this paragraph. Flour second clears produced from Soft Red Winter wheat or White wheat (except the subclass Hard White wheat) or from a mixture which includes at least 80 percent Soft Red Winter or White wheat (except Hard White wheat) shall have an ash content of 0.75 percent or more. Flour second clears produced from Durum wheat, or from a mixture which includes more than 20 percent Durum wheat, shall have an ash content of 1.35 percent or more. Flour second clears produced from any other class or other mixtures shall have an ash content of 1 percent or more. The ash content shall be calculated to a 14 percent moisture basis. Flour second clears shall be a product of the initial milling process and shall not be a product reconstituted by the mixing or blending of the normal byproducts of 72 percent extraction type flour milling operation such as mill run, bran, shorts, middlings, or red dog. When tested for granulation in the manner described below, not less than 98 percent of the product must pass through a cloth having openings not larger than those of woven wire cloth designated "210 micron (No. 70)" in Table I of "Standard Specification for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards. Granulation shall be determined as follows: Sift 100 grams of the product for 5 minutes over a sieve which is clothed with 7XX silk bolting cloth and equipped underneath with four Type A Carmichael cloth cleaners. The flour sifter shall have 15 x 15 inch sieves, 2½-inch throw and a speed of 120 r.p.m. The Type A Carmichael cloth cleaners shall have tufts of goat hair that brushes against the bottom of the silk screen. Weigh the product remaining on top of the sieve and subtract the weight from 100 to determine the percentage of granulation.

(v) "Industrial user" means any person who uses flour second clears in the United States in the production of any products not used for human consumption.

(w) "Nonqualifying clears" means clears which do not comply with the requirements of paragraph (u) of this section.

(x) "Shrinkage" as used herein, means that loss in weight resulting from normal handling of wheat, including the loss in moisture content, which occurs after the wheat is weighed and unloaded into the plant (including the servicing elevator(s)) and until it is removed for milling (i.e. prior to cleaning and tempering) or other disposition. Shrinkage shall not include the loss of weight resulting from artificial drying, screening, or cleaning, nor shall it include any loss of weight to the extent it is offset by any residue which is recovered in the form of sweepings, bin cleanout, or in similar operations.

(y) "Federal Reserve Bank" or "FRB" means the Federal Reserve Bank or Branch which serves the area in which the processor's remitting office is located or such other Federal Reserve Bank or Branch as is designated by the Kansas City Commodity Office. (See listing of banks in Appendix I.)

§ 777.4 Delegation of authority.

Authority has been delegated to the Administrator to promulgate amendments and revisions to the regulations in this part. (See 32 F.R. 7836, May 30, 1967.)

§ 777.5 Applicability of certificate requirements.

(a) *General.* Any food processor processing wheat into food products, as defined herein, in the United States on or after 12:01 a.m. local time, July 1, 1964, regardless of whether he has legal title to the wheat or the food products processed therefrom, shall for the wheat so processed acquire and surrender certificates to CCC at the time and in the manner hereinafter specified in these regulations. The cost of domestic certificates for the marketing year beginning July 1, 1964, shall be 70 cents per bushel. The cost of domestic certificates shall be 75 cents a bushel during the marketing years covered by the period beginning July 1, 1965, through June 30, 1974. In addition to the foregoing, the cost of domestic certificates shall include interest to the extent provided in other provisions of the regulations in this part.

(b) *Exemptions.* Notwithstanding the foregoing, certificates shall not be required in the circumstances specified in the following subparagraphs:

(1) *Farm-use exemption.* Certificates shall not be required for wheat which is processed into a food product for use on the farm where grown and not for sale or other disposition. To support such exemption, the processor shall, at the time of delivery of the food product, obtain a certificate from the producer, or his authorized agent, on Form CCC-148, Food Product Farm Use Certificate, to cover the quantity of food product delivered. The food processor shall exercise care to ascertain that the exemption is not claimed for a quantity of food products in excess of that actually required for use on the farm where produced. The food processor may without acquiring certificates, deliver to the person from whom he obtained the certification on Form CCC-148, a quantity of the food product not in excess of the quantity of the product processed from a quantity of wheat equivalent to the wheat received by the processor from such person less any such wheat which is received by the processor in payment of processing charges. It is not necessary that the food product be processed from the identical wheat received.

(2) *Wheat processed in bond.* Certificates shall not be required for wheat produced outside the United States which moves into the United States under customs bond, which is processed into food products in a bonded manufacturing warehouse, and which is exported without having been withdrawn from bond for consumption in the United States. To obtain such exemption, the food processor shall obtain authenticated copies of customs Form 7521—a copy evidencing the entry of wheat into a bonded manufacturing warehouse and a copy evidencing the withdrawal from customs bond for export of the food product processed therefrom.

(3) *Processing by educational institutions or other persons for purposes of student training, experimentation, research, analysis or testing.* An educational institution or other person engaged in the processing of wheat at any installation primarily for the purpose of student training, experimentation, research, analysis or testing shall not be required to acquire and surrender certificates on any wheat processed at the installation into a food product for any such purpose if the food product is not marketed or removed for sale or consumption. Food processing reports need not be submitted nor records maintained with respect to wheat exempt under this subparagraph or food products processed therefrom.

(4) *Wheat produced by and processed for use by a State or State agency.* Certificates shall not be required for wheat produced by a State or agency thereof and processed beginning July 1, 1964, for use by the State or any agency thereof. To support such exemption, the processor shall at the time of delivery of the food product or at such other time as may be approved in writing by the Director, obtain a certification from an authorized official of the State or State agency on Form CCC-148-1, to cover the quantity of food product delivered. The food processor may, without acquiring certificates, deliver to the State or agency thereof from which he obtained the certification on Form CCC-148-1 a quantity of the food product processed from a quantity of wheat equivalent to the wheat received by the processor from the State or agency thereof less any such wheat which is received by the processor in payment of processing charges. It is not necessary that the food product be processed from the identical wheat received. Any State or State agency which processes exclusively wheat produced by such State or State agency solely for its own use is not required to submit food processing reports under § 777.12.

(5) *Wheat processed for donation.* Certificates shall not be required for wheat processed beginning July 1, 1964, into a food product for donation to needy persons under a welfare or charitable program operated by an approved institution (see § 777.3(s)). If the institution is not the food processor, to support such exemption, the food processor shall, at the time of delivery of the food product, or such other time as may be approved in writing by the Director, obtain from the institution a certification on Form CCC-148-2 to cover the quantity of food product delivered for donation. The food product upon which the claim for exemption is based shall not be disposed of by the institution other than for donation to needy persons. The provisions of this subparagraph do not apply to purchases by CCC for donation.

(6) *Wheat processed for noncommercial uses.* Certificates shall not be required for wheat processed for noncommercial uses as determined by the Administrator and specified in this paragraph. Any food processor who wishes to petition the Administrator to establish in the regulations in this part an exemption for any such use shall submit to the Administrator, the name and detailed description of the food product, the use which is to be made of the food product, the name and address of the person who will make such use, and any other information deemed relevant by the food processor and as may be required by the Administrator. The exemption shall apply to wheat used in the manufacture of food products for the following uses:

(i) *Wheat processed for use by the producer or person to whom he has donated the food product.* Marketing certificates shall not be required for wheat processed beginning July 1, 1964, into a food product for use by either the producer or a person to whom he has donated the food product outside the farm where the wheat was grown. To support the exemption provided for in this subparagraph (6)(i), the processor shall, at the time of delivery of the food product or, at such other time as may be approved in writing by the Director, obtain a certification on Form CCC-148, Food Product Farm Use Certificate, covering the quantity of food product delivered and describing the use to be made of the food product.

(ii) *Wheat processed by a State or State agency for use by a State or State agency or another agency of that State.* Marketing certificates shall not be required for wheat processed beginning July 1, 1964, into a food product by a State or State agency for purposes of training and rehabilitation. Such food product must be used by the State agency processing such wheat or if the food product is removed, by another agency of that State and must not be marketed by any other person. The State agency processing the wheat must maintain complete records of the quantity of wheat processed and of the disposition of the food product processed, as required by § 777.15. Any State or State agency which processes wheat for use exclusively by such State or State agency or another agency of such State shall not be required to submit food processing reports under § 777.12.

§ 777.6 Registration of processors.

(a) *Time of registration.* Any person who processes wheat into a food product (except a person who processes wheat in his home solely for family use in his home and a person who processes wheat on a farm solely for use on such farm), shall register with the Director by making the report required by paragraph (b) of this section by May 30, 1964. Any such person who begins such processing operations subsequent to May 30, 1964, and who is not registered, shall register not later than the date he commences operations. Any person who has registered with the Director and who modifies his operations, such as by opening and closing plants subsequent to the date of his registration, or beginning to process food products, shall give notice of such change to the Director not later than the

date he modifies his operations. Notification shall also be given the Director if there is a change in ownership of the plant, such notification to be made not later than the date the change is effective. An extension in time for registering with the Director or providing the notice required by this paragraph may be approved in writing by the Director for good cause shown.

(b) *Method of registration.* A person who is required to register (hereinafter called "registrant") shall submit to the Director a report on Form CCC-146, Wheat Processor Registration and Report Form. Any person failing to submit such report is subject to criminal penalties. Blank forms may be obtained from the Director or from the Commodity Office listed in paragraph (m) of § 777.3. A separate form in an original and three copies shall be prepared for each processing plant. The original and two copies shall be submitted to the Director and one copy shall be retained by the registrant. The form shall include the following information: (1) Name of the registrant, (2) Central Office address, (3) plant address, (4) list of food products and non-food products processed at each plant, (5) request for any non-food product designation which the registrant may wish to make, (6) such other information on the form as may be required by the Director.

(c) *Notification of registration by Director.* The Director will assign a primary registration number to the person and return one copy of the Form CCC-146 to him. If he operates more than one plant, he will be assigned a sub-number for each plant.

§ 777.7 Refunds or credits for flour exports.

(a) *General.* In order to expand international trade in wheat and wheat flour and promote equitable and stable prices therefor, the Commodity Credit Corporation shall upon the exportation from the United States of any wheat or wheat flour, make a refund to the exporter or allow him a credit against the amount payable by him for marketing certificates, in such amount as is determined will make United States wheat and wheat flour generally competitive in the world market, avoid disruption of world market prices, and fulfill the international obligations of the United States. Refunds shall be made as provided in GR-346. If the amount of the export payment under GR-346 exceeds the cost of the certificates for the flour, a part of the export payment equal to the cost of such certificates shall constitute the refund. If the amount of the export payment does not exceed the cost of the certificates, the entire amount of the payment shall constitute the refund.

(b) *Exports under GR-262.* In the case of wheat acquired from CCC under GR-262 at competitive world prices for export in the form of flour, the exporter will be allowed a credit in the amount of the full cost of certificates required to be acquired and surrendered to CCC for the flour exported in fulfillment of the exporter's obligations under GR-262, or certificates for such amount will be issued to the exporter. When wheat is acquired from CCC under GR-262, CCC will establish a credit or issue certificates in such amount in the exporter's favor which may be transferred to the processor from whom the flour to be exported is acquired. If the exporter does not make exportation as required under GR-262, he shall pay to CCC promptly on demand the amount of the credit or the face value of the certificates applicable to the flour not so exported, together with interest at the rate of 6.5 percent per annum from the date such credit was established or certificates issued.

§ 777.8 Penalties.

(a) *Violation of marketing restrictions—forfeitures.* Any person who beginning July 1, 1964, knowingly violates or attempts to violate or who knowingly participates or aids in the violation of any of the provisions of these regulations with regard to the acquisition of certificates prior to marketing any such food product or removing such food product for sale or consumption shall be subject to section 3791(a) of the Agricultural Adjustment Act of 1938 which provides for the forfeiture to the United States by such person of a sum equal to two times the face value of the certificates involved in such violation. Such forfeiture shall be recoverable in a civil action brought in the name of the United States.

(b) *Violation of marketing restrictions; failure to make reports or maintain records—criminal penalties.* Any person, except a producer in his capacity as a producer, who beginning July 1, 1964, knowingly violates or attempts to violate or who knowingly participates or aids in the violation of any provision of these regulations governing the acquisition, disposition, or handling of certificates or who knowingly fails to make any report or keep any record as required by these regulations shall be subject to the provisions of section 3791 (b) of the Agricultural Adjustment Act of 1938 which state that such person shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $5,000 for each violation.

(c) *Fraudulent use of marketing certificates.* Any person who falsely makes, issues, alters, forges or counterfeits any certificate, or with fraudulent intent possesses, transfers, or uses such falsely made, issued, altered, forged or counterfeited certificate, shall be subject to the provisions of section 3791(c) of the Agricultural Adjustment Act of 1938 which state that such person shall be deemed guilty of a felony and upon conviction thereof shall be subject to a fine of not more than ten thousand dollars or imprisonment of not more than ten years, or both.

§ 777.9 Semi-processed wheat.

Any food processor who processes wheat into cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or other similarly processed wheat as may be designated in § 777.3 (b)(1)(v) shall not market or remove such processed wheat for sale or consumption without acquiring certificates and surrendering certificates to CCC as provided in these regulations, unless the total product of the wheat processed is used in or marketed as a non-food product. Any person who acquires and further processes cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or similarly processed wheat into a food product (including by mixing with a food product or packaging for marketing as a food product) shall be considered a food processor except as otherwise provided in § 777.3(f). Such person shall acquire and surrender certificates and make reports as required by the regulations of this part on the cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or other similarly processed wheat used in the processing of the food product, unless prior to marketing the food product, or removing it for sale or consumption, he has obtained a certification from the person who produced the cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or similarly processed wheat that he has or will acquire and surrender certificates as required by these regulations. The person processing the cracked wheat (wheat grits), ground wheat, crushed wheat, rolled wheat, pearled wheat, or flaked wheat (toasted or untoasted, other than breakfast cereal) or other similarly processed wheat into a food product shall maintain records of the quantities thereof processed into food products as required by § 777.15 and shall retain any certification obtained by him under the foregoing provisions of this section for a period of three years.

§ 777.10 Wheat Marketing Certificate (Domestic).

(a) *Description.* Wheat Marketing Certificates (Domestic), herein called "domestic certificates" or "certificates", shall be represented by Form CCC-145, Wheat Marketing Certificate (Domestic) issued by CCC, or a certificate credit established by CCC in favor of a food processor for certificates purchased from CCC pursuant to these regulations. Form CCC-145 is a serially numbered form entitled "Wheat Marketing Certificate." A Form CCC-145 domestic certificate will be identified as "domestic", will show date of issuance, bushel quantity, face value, name and address of person to whom issued, and the marketing year to which it applies, and will bear the signature of a representative of CCC authorized to sign certificates.

(b) *Sale by CCC.* CCC will sell certificates to food processors and others who offer to purchase certificates from CCC

and who pay to CCC their cost as may be required by the regulations of this part. Offers to purchase certificates for wheat processed in a specific processing report period may be made by submission of a processing report as provided in § 777.12, with a remittance payable to Commodity Credit Corporation for the cost of the certificates, or by submission of the remittance with advice that it is for purchase of wheat marketing certificates and identification of the processor number of the plant and processing period. Offers to purchase certificates not applicable to a specific processing period shall be made by submission of a remittance with advice that it is for purchase of CCC-145, Wheat Marketing Certificates, and the name and address of the payee to be shown on the certificates. All offers to purchase certificates and related remittances shall be made to the FRB unless the Commodity Office has requested that the remittances be sent to that office. Payment for certificates shall be deemed to have been made when payment is received at the FRB or the Commodity Office, except that if payment is by mail, payment shall be deemed to have been made on the date of mailing. If the Commodity Office is unable to determine the date of mailing from the postmark on the envelope, the Commodity Office will establish the date of mailing from other evidence available to it including such evidence as may be supplied by the processor. If the due date for payment without interest falls on a Saturday, Sunday, or holiday, and payment is received or mailed on the next succeeding workday, it shall be deemed to have been made on the due date. Envelopes containing payments shall, on the face show the statement "CCC Wheat Marketing Certificate Reports". Form CCC-145 will be issued for certificates sold by CCC, except that when certificates are purchased for wheat processed in a specific processing report period, CCC will establish a credit in favor of the food processor for the amount of the certificates purchased in lieu of issuing Form CCC-145.

(c) *Negotiability.* Form CCC-145 certificates may be transferred to any person by endorsement and delivery. A person acquiring certificates by transfer may surrender them to CCC to cover wheat processed into food products or may sell them to CCC.

(d) *Surrender of certificates to CCC.* Food processors shall discharge their obligation to surrender certificates to CCC by endorsing Form CCC-145 certificates and delivering them to CCC at the Commodity Office or by making payment to CCC for certificates required for wheat processed into food products in a specific processing report period. Surrender of certificates to CCC shall be deemed to have been made at the time when payment is made for certificates purchased or at the time delivery of Form CCC-145 certificates is made at the Commodity Office. If Form CCC-145 certificates are received in the Commodity Office by mail the delivery shall be deemed to have been made on the date of mailing. If the Commodity Office is unable to determine the date of mailing from the postmark on the envelope, it shall determine such date from other evidence available to it, including such evidence as may be supplied by the processor. Certificates will be deemed to be canceled by CCC upon their surrender to CCC.

(e) *Balance certificates.* If Form CCC-145 certificates delivered to the Commodity Office have a cost to processors which is more than the certificates required to be surrendered, CCC will issue Form CCC-145 certificates to the food processor for the unused balance.

(f) *Purchase by CCC.* Any valid Form CCC-145 certificates legally held by any person will be purchased by CCC if presented for purchase to the Commodity Office.

§ 777.11 Time and manner of acquiring and surrendering certificates.

(a) *General.* Food processors shall acquire certificates and surrender certificates to CCC as provided in paragraphs (b) and (c) of this section and in the manner specified in § 777.10. The number of certificates acquired by the food processor and surrendered to CCC shall be equivalent to the number of bushels of wheat used in processing the food products for which certificates must be acquired and surrendered. Such quantity of wheat shall be determined and reported to CCC as provided in §§ 777.12 to 777.14 on the basis of the weight of wheat used in processing the food products or by application of conversion factors to the weight of food products obtained in the processing operation.

(b) *Undertaking to secure purchase and payment.* Any food processor may market a food product or remove a food product for sale or consumption without first having acquired and surrendered certificates if he enters into the undertaking with CCC provided in this paragraph and complies with such undertaking. The undertaking shall be entered into by filing with the Commodity Office a properly executed "Food Processor Certificate Undertaking," Form CCC-147. The undertaking shall apply to wheat processed into food products in each plant specified in Form CCC-147 beginning with the first day of the processing report period as determined under § 777.12 in which the undertaking was received by the Commodity Office, except that the undertaking shall apply to wheat processed beginning July 1, 1964, if the undertaking is received in the Commodity Office on or before August 25, 1964. If an undertaking has been filed, it shall remain in effect unless the food processor breaches the undertaking in which event it shall terminate at such time as provided in subparagraph (4) of this paragraph, or unless the food processor notifies CCC that he wishes to withdraw the undertaking in which event it shall expire at such time as may be determined by CCC. By filing Form CCC-147 with the Commodity Office, the food processor agrees, in consideration of the right to market food products and to remove food products for sale or consumption without having first acquired and surrendered certificates as follows:

(1) He will acquire certificates from CCC and surrender the certificates for the wheat processed into food products, as required under the regulations of this part on or before the 45th calendar day after the close of the processing report period during which the wheat was processed or such later date as may be approved by the Administrator for good cause shown by the food processor.

(2) If certificates are acquired and surrendered to CCC later than the 15th calendar day after the close of the processing report period during which the wheat was processed, the cost of certificates acquired from CCC shall include interest at the rate of 6.5 percent per annum starting on the 16th calendar day after the close of the processing report period until the date of surrender of the certificates.

(3) If requested by the Administrator, the food processor will furnish a bond or letter of credit in such form and amount and within such period as may be specified by the Administrator to secure the food processor's obligations hereunder.

(4) The food processor's right to market food products and to remove food products for sale or consumption without first having acquired and surrendered certificates is conditioned on his complying with his obligations under the foregoing provisions of this undertaking. If the food processor breaches his undertaking, his right to market food products and to remove food products for sale or consumption without first acquiring and surrendering certificates shall be deemed terminated as of the first day of the reporting period with respect to which the breach occurred.

(c) *Purchase of certificates in absence of undertaking.* (1) Except as provided in paragraph (b) of this section, the food processor must acquire certificates and surrender such certificates to CCC on or before the 15th calendar day after the end of the processing report period, or such later date as may be approved in writing by the Administrator for good cause shown, for all food products sold, or removed for sale or consumption from the processing plant, during the processing report period. (Where reference is made to all food products sold or removed for sale or consumption in this section, it shall be deemed to refer to all food products sold, removed for sale or removed for consumption from the processing plant (whichever occurred first).)

(2) The cost of certificates acquired from CCC shall be as provided in subdivisions (i) and (ii) of this subparagraph.

(i) The food processor may acquire certificates from CCC without a charge for interest to the extent that he acquires and surrenders certificates not later than the last day of each processing report period (as determined under § 777.12) to cover the estimated quantity of wheat used in the processing of food products sold or removed for sale or consumption during the report period. If the certificates acquired and surrendered as provided in this subparagraph are equal to

90 percent or more of the certificates required to cover the wheat used in processing food products sold or removed for sale or consumption during the report period, any additional certificates may be acquired from CCC without a charge for interest if acquired and surrendered to CCC not later than the 15th calendar day after the end of the processing report period, or such later date as may be approved in writing by the Administrator for good cause shown. The cost of any certificates purchased from CCC after such date to cover wheat used in processing the food products sold or removed for sale or consumption during the report period shall include interest at 6.5 percent per annum starting on the first day of the processing report period in which the food products were sold or removed for sale or consumption until the date of surrender of the certificates.

(ii) If the certificates acquired and surrendered to CCC by the food processor as provided in subdivision (i) of this subparagraph are less than 90 percent of the certificates required to cover the wheat used in processing food products sold or removed for sale or consumption during the processing report period, or if the food processor does not acquire and surrender certificates as provided in subdivision (i) of this paragraph, the cost of any certificates purchased from CCC subsequent to the last day of the processing report period to cover the wheat used in processing food products sold or removed for sale or consumption during the processing report period shall include interest at 6.5 percent per annum from the first day of the report period in which the food products were sold or removed for sale or consumption until the date of surrender of the certificates.

(3) Additional reports in absence of an undertaking:

(i) *Processors reporting on the weight of wheat basis.* Food processors purchasing certificates in accordance with paragraph (c) of this section and reporting the quantity of wheat processed into food products on the basis of the weight of wheat processed shall supplement each Form CCC-160 with a statement showing: (*a*) The quantity (in cwt.) and name of food products processed in the reporting period covered by the form, (*b*) the quantity (in cwt.) and name of food products sold and removed for sale or consumption during such period, (*c*) the reporting period in which the food product(s) specified in (*b*) were processed, and (*d*) the wheat equivalent in bushels of such food product(s) calculated by using the actual conversion factor experienced in the reporting period in which processed (bushels of wheat processed into food products divided by cwt. of food products produced). The processor's Form CCC-160 for the first period not covered by an undertaking shall also include a statement showing the quantity of food products remaining in inventory from the previous reporting period(s) and the wheat equivalent of such product(s). For the purpose of determining the report period in which a food product was processed, sales and removals shall be applied to quantities processed on a first produced, first sold and removed basis.

(ii) *Processors reporting on the conversion factor basis.* Food processors who purchase certificates in accordance with paragraph (c) of this section and who report the quantity of wheat processed into food products on a food product conversion factor basis shall supplement each Form CCC-159 with a statement showing (*a*) the quantity (in cwt.) and name of food products sold or removed for sale or consumption during the period covered by the form, (*b*) the quantity of wheat used in the production of such food products, (*c*) the conversion factor(s) used in making such determinations, and (*d*) the reporting period in which the food products were processed. The processor's Form CCC-159 for the first period not covered by an undertaking shall include a statement showing the products and the wheat equivalent in bushels of the products in inventory at the beginning of the period. For the purpose of determining the report period in which a food product was processed, sales and removals shall be applied to quantities processed on a first produced, first sold and removed basis.

(d) *Wheat acquired from CCC for export as flour under GR-262.* The processor of any food products exported in fulfillment of an exporter's obligation to export under GR-262, shall surrender certificates to CCC on such food products as provided in the foregoing paragraphs of this section. A credit will be allowed or certificates issued to the exporter in the manner provided in § 777.7 for the full cost of certificates required to be acquired and surrendered to CCC on such flour.

(e) *Beverage distilled spirits.* In the case of a food processor who ages beverage distilled spirits which he has manufactured from wheat, the beverage distilled spirits are deemed to be removed from the processing plant for consumption for the purpose of these regulations when the spirits are placed in barrels for aging. Certificates shall be acquired and surrendered as provided in paragraph (c) of this section in an amount equivalent to the number of bushels of wheat used on and after July 1, 1964, in processing the beverage distilled spirits, except that a food processor may age beverage distilled spirits manufactured by him from wheat without first having acquired and surrendered certificates if he enters into the undertaking with Commodity Credit Corporation provided in this paragraph and complies with such undertaking. The undertaking shall be entered into by filing with the Commodity Office a properly executed "Food Processor Certificate Undertaking" Form CCC-147. The undertaking shall apply to wheat processed into beverage distilled spirits in each plant specified in such form beginning with the first day of the processing report period specified in the undertaking. By filing Form CCC-147 with the Commodity Office, the food processor agrees in consideration of the right to age beverage distilled spirits manufactured by him from wheat without having first acquired and surrendered certificates as follows:

(1) He will acquire certificates from Commodity Credit Corporation and surrender the certificates for the wheat processed into beverage distilled spirits and placed in a barrel for aging as required under this part, on or before the 45th calendar day after the end of the month in which such barrel of aged beverage distilled spirits is marketed or removed from the warehouse for sale or consumption or the spirits are removed from such barrel, whichever occurs first, or such later date as may be approved by the Administrator for good cause shown by the food processor. The number of certificates for the wheat used in manufacturing the beverage distilled spirits aged in each barrel shall be determined by dividing (i) the total quantity of wheat used by the processor in manufacturing all the beverage distilled spirits which are produced and placed in barrels for aging in the same marketing year as the particular barrel for which certificates are acquired, by (ii) the total number of barrels of beverage distilled spirits produced and placed in barrels for aging in such marketing year.

(2) If certificates are acquired and surrendered to Commodity Credit Corporation later than the 15th calendar day after the end of the month in which the barrel of aged beverage distilled spirits is marketed or removed from the warehouse for sale or consumption or the spirits are removed from such barrel, whichever occurs first, the cost of certificates acquired from CCC shall include interest at 6.5 percent per annum starting on the day after such 15th calendar day until the date of surrender of the certificates.

(3) The food processor shall furnish a bond or letter of credit in such form and amount and within such period as may be specified by the Administrator to secure the food processor's obligations hereunder.

(4) The food processor's right to age beverage distilled spirits without first having acquired and surrendered certificates is conditioned on his complying with his obligations under the foregoing provisions of this undertaking. If the food processor breaches his undertaking, his right to age the spirits without first acquiring and surrendering certificates shall be deemed terminated as of the first day of the report period with respect to which the breach occurred.

(f) *Inapplicability of interest.* Interest charges under this section will not apply to the extent it is established to the satisfaction of the Administrator, ASCS, that a delay in the acquisition and surrender of certificates resulted from reliance in good faith upon action or advice of an authorized official of the Department. Any processor who wishes to apply for relief under this section shall submit a request in writing supported by documentary evidence necessary to substantiate the basis on which the application is made.

§ 777.12 Food processing reports.

(a) *General.* Processing reports shall be submitted by each food processor as defined in § 777.3(f). Descriptions of the processing reports are set forth in §§ 777.13 and 777.14 and detailed instructions are provided in Appendices II and III. Processing reports which are accompanied by remittances for purchase of certificates shall be submitted to the FRB unless the Commodity Office has requested that the remittance be made directly to that office. Processing reports not accompanied by remittances shall be submitted to the Commodity Office. Addresses of FRB's are listed in Appendix I.

(b) *Processing report period.* (1) The period of processing operations which a processing report shall cover shall be one of the following:

(i) Each calendar month.

(ii) 4 or 5 week periods in combination.

(iii) Each 4 weeks.

(iv) Effective commencing with the marketing year beginning July 1, 1965, each 6-month period in the case of a food processor whose certificate liability during the previous marketing year totalled 300 bushels of wheat or less. The first 6-month report shall cover the 6-month period beginning on 12:01 a.m., July 1, and ending at midnight December 31, and succeeding reports shall cover each 6-month period thereafter. CCC reserves the right to require any processor to report in the period prescribed in (i), (ii), or (iii) above.

(v) Effective commencing with the marketing year beginning July 1, 1968, once annually in the case of a food processor whose certificate liability during the previous marketing year totalled 100 bushels of wheat or less. The report shall cover the period July 1 through June 30. CCC reserves the right to require any processor to report in the period prescribed in subdivision (i), (ii), (iii) or (iv) of this subparagraph.

(2) The food processor shall report to the Commodity Office the processing report periods which he proposes using, by listing specific report periods ending dates for the entire marketing year. The list shall be submitted with Form CCC-147, "Food Processor Certificate Undertaking," if such an undertaking is made, otherwise, with the first processing report. If such list is not submitted, the food processor shall report on a calendar month basis.

(3) Once a processing report period has been established, it shall not be changed for any marketing year except with the approval of the Administrator in writing for good cause shown.

(4) The first report period for any marketing year shall begin on July 1 at 12:01 a.m. If a food processor elects to use a processing report period as provided in paragraph (b)(1) (ii) or (iii) the first report period shall end at such time short of 5 weeks as will make the second report coincide with the plant's established 4- or 5-week reporting period. The last report period for any marketing year shall end with the close of business on June 30. If the first period is less than 7 days, such period need not be reported separately, but may be included in the report for the first full 4- or 5-week period as applicable; similarly, if the last report period is less than 7 days it may be included in the last full 4- or 5-week period as applicable.

(c) *Date of submittal.* The processing report shall be submitted not later than 15 days after the close of the processing report period (or such later date as may be approved by the Administrator for good cause shown by the food processors). If the report is received by mail, it shall be deemed to have been submitted on the date of mailing. If the Commodity Office is unable to determine the date of mailing from the postmark on the envelope, it shall determine such date from other evidence available to it, including such evidence as may be supplied by the processor. If the due date of a report falls on a Saturday, Sunday, or holiday, and the report is submitted on the next succeeding workday, it shall be deemed to have been submitted on the due date.

(d) *Basis of reporting.* The weight of wheat basis of reporting prescribed in § 777.13 shall be used except that if conversion factors are provided in § 777.14 for all the food products processed in the plant (or approved combination of plants as provided in paragraph (e) of this section) covered by the report, the food processor may elect to use the food product conversion factor basis prescribed in § 777.14. The basis of reporting used in a food processor's first report in a marketing year, i.e., weight of wheat or conversion factor basis, shall be deemed to constitute his election to use such basis for the entire marketing year, and all subsequent reports for any marketing year shall be on such basis, unless the Administrator for good cause shown approves in writing a change of the basis of reporting.

(e) *Plant or plants.* Separate processing reports shall be submitted for each plant in which any wheat is processed into a food product, for each processing report period, with the exception that a food processor may apply to the Director in advance for approval of a combination of two or more plants or a division of the plant. Such approval will be given if such change better suits the inventory, operating or records systems applicable to such plants and if the change does not impair verification of quantities processed. If such approval is given, the combination of plants will be assigned a new subnumber in the Director's notification of approval.

(f) *Number of report periods for which submitted.* A processing report shall be submitted for each report period beginning July 1, 1964, regardless of whether there was any wheat processed in the processing plant during the period.

(g) *Corrected processing reports.* If it is found that an incorrect processing report has been submitted, the food processor shall promptly prepare and submit a corrected processing report with the applicable beginning and ending dates for the period involved indicated thereon. A consolidated corrected report may, with the approval of the Director, be submitted to cover more than one processing report period. Such report shall be identified as a "Corrected Report" and transmitted with a letter of explanation. If the processor is entitled to a certificate refund, he shall submit the corrected report to the Commodity Office and indicate whether the amount of the refund should be paid to him or held for application to a subsequent report. If the processor is required to purchase additional certificates, he shall submit the corrected report together with his remittance for such certificates to the FRB, unless the Commodity Office requests that it be submitted directly to that office. If such certificates are surrendered to CCC later than the 15th calendar day after the close of the processing report period in which the wheat was processed into the food products, the cost of any certificates acquired from CCC shall include interest at the rate of 6.5 percent per annum starting on the 16th calendar day after the close of the processing report period until the date of surrender of the certificates. Any food processor, who has made an incorrect processing report, corrected such report as provided in this section, and surrendered any additional certificates due with the corrected report, will not be subject to the forfeitures referred to in § 777.8 to the extent that the Administrator determines that the error in the report was due to an honest mistake and was not intentional or the result of gross negligence.

(h) *Reports from persons engaged in the processing of wheat primarily for student training, experimentation, research analysis or testing.* Notwithstanding the foregoing provision of this section, food processing reports are not required to be submitted with respect to any wheat processed at an installation by an educational institution or other person which processes wheat at the installation primarily for the purpose of student training, experimentation, research, analysis or testing during a processing report period if all the wheat processed during the period is exempt from the requirement for the acquisition of certificates under § 777.5(b)(3). If any wheat processed into food products during the report period is not so exempt, the food processor shall report on Form CCC-159 on a calendar month basis, the quantity of wheat processed into such food products. The name of such food products shall be entered on the form if not preprinted. If conversion factors are specified in § 777.14 for the food products not so exempt, the quantity of food products produced shall be entered in Item 7(a) the applicable conversion factor in Item 7(b), and the wheat equivalent in Item 7(c). If conversion factors are not so specified, the actual number of bushels used in the processing of the food products shall be entered in Item 7(c). Such person shall state in Item 8 "Wheat not exempt under § 777.5(b)(3) processed at an installation by a person

engaged in the processing of wheat at such installation primarily for the purpose of student training, experimentation, research, analysis or testing." The remaining items of the report shall be completed in accordance with Appendix III.

(i) *Beverage distilled spirits.* In the case of a food processor who ages beverage distilled spirits manufactured by him from wheat, the first period of processing operations which a processing report shall cover shall be the period beginning July 1, 1964, and ending June 30, 1965. Thereafter, processing reports shall cover periods as provided in paragraph (b) of this section. In addition, a food processor who has submitted the undertaking provided in § 777.11(e) shall submit not later than the 15th calendar day after the end of the month in which each barrel of aged beverage distilled spirits is marketed or removed from the warehouse for sale or consumption or the spirits are removed from such barrel, whichever occurs first (or such later date as may be approved by the Administrator for good cause shown by the food processor), a report identifying the month in which this occurred, the serial number of the barrel in which such beverage distilled spirits were aged and the processing report period in which the beverage distilled spirits were produced from wheat.

§ 777.13 Weight of wheat basis of reporting.

(a) *General.* Food processors reporting the quantity of wheat processed into food products on the basis of the weight of wheat processed, shall complete Form CCC-160, Processing Report-Weight of Wheat Basis, for each reporting period in accordance with detailed instructions set forth in Appendix II of this part. Determinations of the weight of wheat processed into food products shall be made in the manner prescribed in Appendix II. No deductions may be made for any by-products of a food product obtained in the processing of the wheat.

(b) *Additional reports in absence of an undertaking.* Food processors purchasing certificates in accordance with § 777.11(c) shall supplement each Form CCC-160 with a statement containing the information required by such section.

§ 777.14 Conversion factor basis of reporting.

(a) *Report form.* Food processors reporting the quantity of wheat processed into food products on the basis of the application of conversion factors to the weight of food products obtained in the processing operation (herein called "food product conversion factor basis") shall complete Form CCC-159, Processing Report-Conversion Factor Basis, for each reporting period.

(b) *Additional ingredients.* If the food product conversion factor basis of reporting is used to determine the quantity of the wheat processed, such quantity may be reduced by the weight of any additional ingredient included in the weight of the food products and introduced during the course of processing. "Additional ingredient" for purposes of this paragraph means:

(1) Any flour and other food products including clears and malted wheat flour, which were produced prior to July 1, 1964, or for which certificates have previously been acquired and surrendered to CCC by the processor or for which certificates are required to be acquired and surrendered to CCC by another food processor from which the food product was purchased.

(2) Any nonwheat ingredient including, but not limited to malted barley flour, creta preparata, and self-rising components, but not including moisture used in the tempering of wheat or otherwise introduced in the production of the product.

(c) *Conversion factors.* For purposes of this section, the wheat equivalent of each food product named in column A shall be the number of bushels prescribed as the conversion factor for such product in column B.

A—Food product	*B—Bushels of wheat equivalent per 100 pounds of product (conversion factor)*
Whole wheat flour or graham flour	1.700
Flour (including clears) derived from conventional milling practices which are generally accepted in the milling industry in the United States as representing a 72 percent extraction rate operation	2.344
Semolina	2.344
Farina	2.344
Malted wheat flour	2.075
Bulgur	2.000
Rolled wheat	1.860
Cracked wheat (wheat grits), ground wheat, or crushed wheat	1.700
Heavy bran, type A (extraction approximately 40 percent heavy bran and 50 percent flour)[1]	1.310
Heavy bran, type B (extraction approximately 57 percent heavy bran and 32 percent flour)[1]	1.640
Whole wheat cereal, including fines (extraction approximately 80 percent cereal and 13 percent fines)[2]	2.090
Wheat bits cereal, including fines (extraction approximately 68 percent cereal and 27 percent fines)[2]	2.440
Cracked wheat for cereal, including fines (extraction approximately 59 percent cracked wheat and 27 percent fines)[2]	2.800
Granular cereal (extraction approximately 21 percent Granular cereal and 55 percent flour)[2]	1.827
Popped wheat (manufactured from wheat that is soaked and then immersed in boiling oil)[2]	1.813
Whole wheat flakes for cereal, including fines (extraction approximately 89 percent cereal and approximately 7 percent fines)[2]	1.870

[1] The flour produced is subject to the regular conversion factor applicable to a 72 percent extraction operation.

[2] When certificates are acquired for these products based on the conversion factors specified, certificates will be deemed to have been acquired for the fines derived in connection therewith.

[3] Wheat equivalent of product is predicated on combined nonwheat ingredients equaling approximately 25.4 percent.

A—Food product	*B—Bushels of wheat equivalent per 100 pounds of product (conversion factor)*
Wheat flour-middlings blend (extraction rate approximately 80 percent, produced in a continuous operation whereby a portion of the middling streams are fed back into the flour streams; the product contains approximately 90 percent straight grade flour and 10 percent middlings)	2.083

(d) *Other conversion factors.* (1) There shall be no conversion factors other than those prescribed in paragraph (c) of this section, except that any food processor may petition the Administrator to establish in the regulations a conversion factor for any additional food product or flour of other rates of extraction.

(2) Any person who wishes to petition for the establishment of a conversion factor for food products other than flour shall submit to the Administrator:

(i) The name and a detailed description of the food product, and

(ii) The conversion factor which is considered to be applicable. (Such factor is to be based upon the quantity of wheat, prior to cleaning, that is required to produce 100 pounds of the particular food product), and

(iii) Evidence to substantiate the recommended conversion factor.

(3) Any person who wishes to petition for the establishment of a conversion factor for flour of other rates of extraction shall submit to the Administrator the rate of extraction for which he desires the establishment of a conversion factor, and a statement to the effect that he mills flour of such rate of extraction.

(e) *Preparation of the report.* Instructions for the preparation of Forms CCC-159 are contained in Appendix III of this part.

(f) *Additional reports in absence of an undertaking.* Food processors who purchase certificates in accordance with § 777.11(c) shall supplement each Form CCC-159 with a statement containing the information required by such section.

§ 777.15 Records.

Food processors shall establish and maintain for each processing plant or approved combination of plants accurate records and documents which are necessary (a) to determine the total quantity of wheat processed into food products based upon the weight of wheat used in processing food products as provided in § 777.13 and Appendix II or based upon the application of conversion factors to the weight of food products obtained in the processing operation as provided in § 777.14 and Appendix III, whichever is applicable and (b) to support all reports required by the regulations in this part. A food processor shall establish and maintain accurate records of all sales of food products and removals of food products for sale and consumption from the processing plant unless he elects to have all wheat processed during each reporting period considered as having been sold or removed for sale or consumption during such reporting period.

The food processor's failure to maintain such records shall constitute his election to have wheat processed during each reporting period considered as having been sold or removed for sale or consumption during such reporting period. Representatives of the U.S. Department of Agriculture may examine the foregoing records and documents and the stocks of wheat and food products in storage or in the processing plant at any time during normal business or working hours. All such records shall be retained for a period of three years.

§ 777.16 Casualty losses.

(a) CCC shall make a refund to the food processor or allow him a credit against the amount payable for certificates to the extent of the cost of certificates acquired and surrendered to CCC on any food products which the food processor establishes to the satisfaction of the Administrator was destroyed or rendered unmarketable for use as a food product as a result of a fire, casualty, or act of God prior to sale or removal for sale or consumption (whichever occurs first).

(b) CCC shall make refund to an industrial user to the extent of the value of certificates acquired and surrendered on wheat used in producing flour second clears when it is established to the satisfaction of the Administrator that flour second clears acquired by the industrial user were destroyed or rendered unfit for human consumption as a result of a fire, casualty, or act of God.

§ 777.17 Payments in dispute.

The making of a payment to CCC for certificates, or the surrender of certificates to CCC by a food processor, or the making of an undertaking by the processor pursuant to § 777.11, shall not deprive the food processor of any right which he might otherwise have to assert a claim in the event of a dispute as to the number of certificates, if any, required to be acquired and surrendered by him to CCC or as to the refunds or credits against the cost of certificates to which he or the exporter of flour is entitled on flour exported.

§ 777.18 Food processors manufacturing flour second clears.

(a) *General.* The food processor is required to purchase and surrender certificates for the wheat used in processing flour second clears in accordance with the other provisions of these regulations. Refunds of the cost of such certificates shall be made only to industrial users of flour second clears as provided in § 777.19.

(b) *Certification.* The processor shall upon request from the buyer, distributor, or other transferee of flour second clears execute and furnish a Form CCC-165, Processor Certification, Flour Second Clears, to establish that the flour second clears produced by him and sold to the buyer meet the definition of flour second clears. A separate invoice and a separate Form CCC-165 is required for each separate railroad car, truckload, or other applicable shipment unit of flour second clears. The processor shall issue only one original Form CCC-165 for each such unit. The processor shall issue only one original Form CCC-165 for each shipment unit of blended flour second clears. If the blend is constituted in whole or in part of flour second clears produced by the processor in a different plant than the plant in which the blending is accomplished, a separate Form CCC-165 must be issued by each plant from which the flour second clears were transferred and such form must be retained in the records of the plant in which the blending is accomplished to identify the use of such flour second clears in the blend.

(c) *Blending by the processor.* (1) Except as provided in subparagraph (2) of this paragraph if a processor blends flour second clears with either nonqualifying clears, other types of flour or any other ingredient, or if the processor blends flour second clears produced by him with flour second clears produced by a different processor, the entire blended quantity shall be ineligible for refund.

(2) A processor may blend flour second clears under any of the following conditions without the blended lot thereby becoming ineligible for refund:

(i) If the processor blends together different quantities of flour second clears produced by him, including quantities of flour second clears produced from different classes of wheat and quantities of flour second clears produced in two or more plants;

(ii) If the processor blends flour second clears with nonqualifying clears, other types of flour or any other ingredient in a plant in which the processor, acting as an industrial user, uses the blended lot in the production of a product not for human consumption; or

(iii) If the processor mixes quantities of flour second clears with nonqualifying clears which, except for ash content, meets the requirements of § 777.3(u): *Provided* (*a*) All of the clears were produced in the same plant as where the mixing occurs, and (*b*) the clears were processed either from the same class of wheat, or if processed from different classes of wheat all of the clears in the mixture are subject to the same minimum ash requirements of § 777.3(u). The resultant product shall qualify as flour second clears if it meets the requirements of § 777.3(u), irrespective of whether all of the clears which constituted the blend conformed to the ash requirements of § 777.3(u) prior to the time the combining occurred.

(d) *Records.* The processor shall retain a copy of all Forms CCC-165 which he issues. Each Form CCC-165 shall be identified to its respective invoice number and the quantity invoiced. To support the certifications, the processor must retain laboratory reports and mill records which identify production runs by date of processing, lot number, type of wheat processed, and which can be identified to the flour second clears covered by an invoice. The laboratory reports shall contain an analysis of the ash content of the flour second clears but need not show the granulation of the clears. In the case of blended flour second clears, it is necessary that (1) all the flour second clears used in the blend be sampled and analyzed at the processor's plant where the flour second clears were produced prior to the blending and issuance of the Forms CCC-165 and (2) the records reflect the quantity of each type of flour second clears used in the blend except that the ash analysis which supports blended clears as described in paragraph (c)(2)(iii) of this section must be based on a composite of samples which are representative of the clears shipped and not on samples of the production runs comprising the shipments. The forms and records required of processors of flour second clears shall be retained and be subject to examination as provided in § 777.15.

§ 777.19 Industrial users of flour second clears.

(a) *General.* Refunds of the certificate cost for wheat used in processing flour second clears shall be made to industrial users who use the flour second clears in producing products not used for human consumption as provided in this section. The refund shall be based on the hundredweight of flour second clears used to produce a product not for human consumption, determined as provided in paragraph (h) of this section, multiplied by the refund rate determined as provided in paragraph (e) of this section.

(b) *Registration of industrial users of flour second clears*—(1) *Requirement.* Refunds will be paid only to industrial users registered with the Director.

(2) *Method of registration.* Industrial users who wish to register shall submit to the Director, Form CCC-149, Industrial User Registration Form, in an original and two copies. Each plant must be registered separately. Forms may be obtained from either the Director or the Commodity Office.

(3) *Notification of registration by the Director.* The Director will assign an industrial user number and return one copy of the Form CCC-149 to notify the industrial user that he is registered and of the number assigned to his plant.

(c) *Reports and claims for refund.* The industrial user shall submit claims for refund to the Commodity Office on Form CCC-161, Industrial Users Production Report and Claim for Refund, except that industrial users producing nonfood products only, from flour second clears and nonqualifying clears, may submit claims for any reporting period described in paragraph (d) of this section in which such production occurred on Form CCC-161-1, Industrial Users Production Report and Claim for Refund (for users who produce nonfood products only). These forms shall be used by the industrial user to report all products manufactured from flour second clears and nonqualifying clears in a plant during a reporting period. Production reports on Form CCC-161 or Form CCC-161-1 must be submitted for each reporting period after the period covered by the first claim for refund even though the period may not involve a claim for refund. Payment will not be made of

any claim until the Commodity Office has received from the industrial user Forms CCC-161 or Forms CCC-161-1 covering all prior reporting periods for which the user must file a report. Where reference is made to Form CCC-161 in this section (except in paragraph (h)(3)), it shall also be deemed to refer to Form CCC-161-1.

(d) *Reporting periods.* (1) The period of processing operations which Form(s) CCC-161 must cover shall be one of the following:

(i) Each calendar or fiscal month,

(ii) Each 4- or 5-week period in combination, or

(iii) Each 4 weeks.

(2) The first report shall cover the first processing report period beginning on or after 12:01 a.m., January 1, 1966, for which the industrial user wishes to file a claim for refund. If an industrial user elects to use a reporting period other than the calendar month, the first reporting period shall end at such time short of 5 weeks as will make the second report coincide with the established fiscal month or 4- or 5-week reporting period.

(3) The industrial user of flour second clears shall report to the Commodity Office the reporting periods which he proposes using, by listing specific reporting period ending dates for the entire marketing year. If such list is not submitted, the industrial user shall report on a calendar month basis.

(4) Once a reporting period has been established, it shall not be changed except with the approval of the Administrator in writing for good cause shown.

(e) *Refund rate.* The refund rate for the marketing years beginning July 1, 1965, and July 1, 1966, shall be $1.71 per hundredweight, which was determined on the basis of a conversion factor of 2.283, multiplied by the applicable certificate cost rounded to the nearest cent. The refund rate for the marketing year beginning July 1, 1967, shall be $1.69 per hundredweight, which was determined on the basis of a conversion factor of 2.252, multiplied by the applicable certificate cost rounded to the nearest cent. The refund rate for the marketing year beginning July 1, 1968, and July 1, 1969, shall be $1.68 per hundredweight, which was determined on the basis of a conversion factor of 2.240, multipled by the applicable certificate cost rounded to the nearest cent. The refund rate for the marketing years covered by the period beginning July 1, 1970, through June 30, 1974, shall be $1.67 per hundredweight, which was determined on the basis of a conversion factor of 2.230 multiplied by the applicable certificate cost rounded to the nearest cent. The refund rate to be used in the rate applicable to the marketing year in which the flour second clears were produced as shown by the processor on Form CCC-165.

(f)(1) *Basis for claiming refund.* Refund of certificate costs may be claimed on flour second clears as provided in this section if the flour second clears were received into the industrial user's plant on and after January 1, 1966, and were either sold by the processor (i.e. title was transferred) or shipped from the processor's plant on or after November 3, 1965. The industrial user may claim the refund only after the flour second clears are used in or manufactured into products which can only be used for other than human consumption or at such time as the nonfood use of the products manufactured has been established by labeling, by identification on the invoice of a product sold or removed from the plant in bulk, or by use.

(2) If a product produced from flour second clears for which an industrial user has received a refund is diverted to food use, the industrial user shall file a corrected Form CCC-161 and reimburse CCC in the amount of the overpayment of refund plus interest at 6.5 percent per annum starting on the date of the CCC sight draft by which refund was made to the date of payment to CCC.

(g) *Invoicing requirement.* Industrial user's invoices covering a product(s) produced from flour second clears on which a refund is requested and which can be utilized as either food or nonfood must include the statement: "This product is not for human consumption."

(h) *Determination of quantity of flour second clears not used for human consumption.* The quantity of flour second clears eligible for a refund shall be determined as provided in this paragraph, unless otherwise specified in these regulations.

(1) If, during a reporting period, an industrial user produces only products not used for human consumption and uses flour second clears either alone or in combination with nonqualifying clears or other ingredients in such production, the quantity of flour second clears eligible for a refund shall be the total number of hundredweight of flour second clears so used.

(2) If, during a reporting period, an industrial user produces both products not used for human consumption and products used for human consumption and uses flour second clears either alone or in combination with nonqualifying clears or other ingredients in such production, the quantity of flour second clears eligible for a refund shall be determined by prorating the flour second clears used between the products produced for human consumption and the products produced for other than human consumption.

(3) If any processing involving flour second clears, nonqualifying clears or other ingredients, either alone or in combination with one another is accomplished separately from any other processing, and such separate processing is supported (in a manner satisfactory to the Administrator) by production records which identify the products to the materials used in such separate processing operation, the industrial user may report the production from such processing operation separately on Form CCC-161. (If the processing involves only other ingredients and no flour second clears or nonqualifying clears are used, such processing need not be reported.) Any period in which such separate processing operation is accomplished is referred to as a "production period" on Form CCC-161. If separate processing is claimed for any period when in fact there was not a physical separation in the production line, from the preceding and succeeding periods, of materials used and products produced, the entire claim is invalid and the industrial user submitting such claim may be subject to penalties under Federal civil and criminal statutes.

(i) *Records.* In submitting Form CCC-161 for a refund, the industrial user agrees:

(1) That he shall maintain accurate records and documents which support the information shown on Form CCC-161 and establish that he is eligible for a refund is claimed. Documents necessary shall include, among other things, Forms CCC-165 received from the processor who produced the flour second clears or Forms CCC-165-1 received from the distributor of the flour second clears which establish that the flour second clears on which a refund is requested meet the requirements of the definition as provided in § 777.3(u), production records which show the quantity of clears utilized and products produced therefrom, and records which establish that the products obtained from the flour second clears for which a refund is claimed were not used for human consumption or were disposed of other than for human consumption.

(2) That representatives of the USDA may examine such records and documents at any time during normal business or working hours.

(3) That all refunds by CCC are subject to verification that the flour second clears for which such refunds are made were produced into products not used for human consumption.

(4) That all such records and documents shall be retained for a period of 3 years.

(j) *Corrected claims for refund.* If an incorrect Form CCC-161 has been submitted to the Commodity Office, the industrial users shall promptly prepare and submit a corrected Form CCC-161. If two or more consecutive reporting periods are involved, a consolidated corrected report may, with the approval of the Director, be submitted to cover more than one reporting period. All corrected reports shall be identified by the original report number(s) and transmitted with a letter of explanation. If the industrial user is entitled to additional refund, payment will be made by the Commodity Office. If an amount is due CCC, the industrial user shall include with the corrected report payment of the amount due CCC, plus interest at 6.5 percent per annum starting on the date of the CCC sight draft by which the excess refund was made to the date of payment to CCC.

(k) *Performance security.* If requested by the Administrator, the industrial user shall furnish a bond or letter of credit in such form and amount as may be specified by the Administrator to

protect the Department from any damages resulting from action by the industrial user.

(1) *Blended flour second clears.* A blended quantity of flour second clears acquired by the industrial user shall be ineligible for refund if:

(1) The quantity had been blended by the processor from flour second clears and nonqualifying clears or any other ingredient unless permitted by § 777.18 (c) (2);

(2) The quantity had been blended by the processor from flour second clears produced by him and flour second clears produced by another processor; or

(3) The quantity had been blended by a distributor or any person other than the processor of the flour second clears. A blended quantity of flour second clears acquired by the industrial user may qualify for a refund if the quantity had been blended by the processor in accordance with the provisions of § 777.18 (c) (2). The industrial user may also blend flour second clears in a plant in which the clears are used in the production of a product not for human consumption. An industrial user who acquires blended flour second clears should exercise care that the blend acquired by him is in compliance with the provisions of § 777.18(c) (2).

§ 777.20 Sales of flour second clears by distributors.

(a) *General.* If flour second clears are sold to an industrial user by a distributor, broker, or agent (herein referred to as a distributor) and the distributor elects not to furnish the industrial user with the Form CCC-165 issued by the processor, the industrial user may qualify for a refund on such clears only if the industrial user has obtained in lieu thereof a Form CCC-165-1 properly executed by a distributor who is registered with the Director.

(b) *Time of registration.* A distributor must be registered prior to issuing to an industrial user any Form CCC-165-1 which is used to support a claim for refund.

(c) *Method of registration.* A distributor who wishes to be registered must submit an application to the Director in writing that he wishes approval to issue to buyers of flour second clears properly executed Forms CCC-165-1 which may be used in lieu of Form CCC-165 as a basis for a claim for refund.

(d) *Conditions for registration.* The distributor shall agree in his application for registration:

(1) That he will properly execute Forms CCC-165-1 and shall maintain accurate records and documents (including Forms CCC-165 and a copy of each related Form(s) CCC-165-1) which verify that the flour second clears shipped to an industrial user for which a Form CCC-165-1 was issued are the flour second clears which he had received supported by a Form CCC-165.

(2) That any pertinent records and documents will be retained for a period of 3 years and that representatives of USDA may examine them at any time during normal business or working hours.

(3) That he will, if requested by the Administrator, furnish a bond or letter of credit in such form and amount as may be specified by the Administrator to protect the Department from any damages that may result from action by the distributor.

(e) *Notification of registration by the Director.* The Director will assign a distributor registration number and notify the distributor in writing that he is registered and give the number assigned to him unless it is determined that to permit such distributor to be registered is not in the best interest of the United States.

(f) *Blending.* If flour second clears supported by more than one Form CCC-165 are blended together or if flour second clears are blended with nonqualifying clears or any other ingredient by the distributor, the entire blended lot shall be ineligible for refund.

APPENDIX I—LIST OF FEDERAL RESERVE BANKS AND BRANCHES

Federal Reserve Bank	*Address*
Boston	30 Pearl Street, Boston, Mass. 02106.
New York	33 Liberty Street, New York, N.Y. 10045.
Buffalo Branch	160 Delaware Avenue, Buffalo, N.Y. 14240.
Philadelphia	925 Chestnut Street, Philadelphia, Pa. 19101.
Cleveland	1455 East Sixth Street, Post Office Box 6387, Cleveland, Ohio 44101.
Cincinnati Branch.	105 West Fourth Street, Post Office Box 999, Cincinnati, Ohio 45201.
Pittsburgh Branch.	717 Grant Street, Post Office Box 867, Pittsburgh, Pa. 15230.
Richmond	100 North Ninth Street, Richmond, Va. 23213.
Baltimore Branch.	114-120 East Lexington Street, Baltimore, Md. 21203.
Charlotte Branch.	401 South Tryon Street, Charlotte, N.C. 28201.
Atlanta	104 Marietta Street NW., Atlanta, Ga. 30303.
Birmingham Branch.	1801 Fifth Avenue North, Post Office Box 2574, Birmingham, Ala. 35202.
Jacksonville Branch.	515 Julia Street, Post Office Box 929, Jacksonville, Fla. 32201.
Nashville Branch.	301 Eighth Avenue North, Nashville, Tenn. 37203.
New Orleans Branch.	147 Carondelet Street, Post Office Box 61630, New Orleans, La. 70160.
Chicago	230 South La Salle Street, Post Office Box 834, Chicago, Ill. 60690.
Detroit Branch	160 Fort Street West, Post Office Box 1059, Detroit, Mich. 48231.

APPENDIX I—LIST OF FEDERAL RESERVE BANKS AND BRANCHES—Continued

Federal Reserve Bank	*Address*
St. Louis	411 Locust Street, Post Office Box 442, St. Louis, Mo. 63166.
Little Rock Branch.	West Capital and Spring Street, Post Office Box 1261, Little Rock, Ark. 72203.
Louisville Branch.	410 South Fifth Street, Post Office Box 890, Louisville, Ky. 40201.
Memphis Branch.	170 Jefferson Street, Post Office Box 407, Memphis, Tenn. 38101
Minneapolis	73 South Fifth Street, Minneapolis, Minn., 55440.
Helena Branch	400 North Park Avenue, Helena, Mont. 59601.
Kansas City	925 Grand Avenue, Kansas City, Mo. 64198.
Denver Branch	1111 17th Street, Denver, Colo. 80217.
Oklahoma City Branch.	226 Northwest Third Street, Oklahoma City, Okla. 73125.
Omaha Branch	102 South 17th Street, Omaha, Nebr. 68102.
Dallas	400 South Akard Street, Station K, Dallas, Tex. 75222.
El Paso Branch	301 East Main Street, Post Office Box 100, El Paso, Tex. 79999.
Houston Branch.	1701 San Jacinto Street, Post Office Box 2578, Houston, Tex. 77001.
San Antonio Branch.	210 West Nueva Street, Post Office Box 1471, San Antonio, Tex. 78206.
San Francisco	400 Sansome Street, San Francisco, Calif. 94120.
Los Angeles Branch.	409 West Olympic Boulevard, Post Office Box 2077, Los Angeles, Calif. 90054.
Portland Branch.	915 Southwest Stark Street, Post Office Box 3456, Portland, Oreg. 97208.
Salt Lake City Branch.	120 South State Street, Post Office Box 780, Salt Lake City, Utah 84110.
Seattle Branch	1015 Second Avenue, Post Office Box 3567, Seattle, Wash. 98124.

Processors are requested to use the Post Office Box number only when sending remittances to the Federal Reserve Bank or Branch for which both the street address and Post Office Box number are shown in Appendix I.

APPENDIX II—INSTRUCTIONS FOR PREPARATION OF PROCESSING REPORT—WEIGHT OF WHEAT BASIS

Food processors reporting on the weight of wheat basis shall submit an original and one copy of Processing Report-Weight of Wheat Basis, Form CCC-160, as set forth in § 777.12(a). Retain a copy of the processing report and all copies of any supporting certifications and documents in your files. Prepare the report as follows:

(1) Enter in Item 1 the processor's name and address.

(2) Enter in Item 2 the processor number.

(3) Enter in Item 3 the processing report period beginning and ending dates.

(4) Enter in Item 4A the inventory of wheat at the processing plant location as of the beginning of the reporting period. Specify the total of all stocks of wheat (including stocks stored for others) in the processing plant and in any elevator operated by the processor at the processing plant location servicing the processing plant which remains in its whole form and has not been pearled, boiled, steeped, or commercially sprouted. Except as of July 1, 1964, use the ending inventory from the previous report. As of July 1, 1964, the quantity of such wheat shall be determined by weighup or by accurate measurement of the wheat stored. Deduct from the uncleaned quantity included in the beginning inventory, any officially determined dockage contained in the equivalent quantity of the last received wheat. If the last received equivalent quantity includes any wheat received on a gross weight basis on which no official dockage determination was made, but the dockage content was unofficially determined in accordance with usually accepted testing methods, the unofficial dockage (rounded down to the nearest half percent) may be deducted from the quantity so received.

(5) Enter in Item 4B the weight of all wheat received in the processing plant and in any elevator operated by the processor at the processing plant location servicing the processing plant (including stocks owned by others) during the reporting period. Such quantity shall be the gross weight received less any officially determined dockage. If any wheat is received on a gross weight basis and no official dockage determination was made, but the dockage content is unofficially determined in accordance with usually accepted testing methods, the unofficial dockage (rounded down to the nearest half percent) may be deducted from such quantity. If any wheat has been artificially dried (through the use of artificial heat) at the elevator operated by the processor at the processing plant location, or at the plant prior to processing in order to permit it to be safely stored, the processor may determine the quantity to be entered in Item 4B by using the gross weight of such wheat after it has been artificially dried less dockage (as determined in this paragraph), except that the weight of wheat artificially dried to less than 12.5 percent moisture shall be adjusted upward to reflect a 12.5 percent moisture. When the weight after artificial drying through the use of artificial heat is used, the processor must show in his records the gross weight and the moisture content of the wheat after drying. If the processor is unable to weigh the wheat as it is removed from the dryer, he may determine the weight which is lost through artificial drying of such wheat on the following basis: Multiply the receiving weight by 1.2 times the percentage difference between the moisture content of the wheat prior to drying and the moisture content of the wheat after drying or 12.5 percent whichever is higher. Processors shall use one of the following moisture meters or methods to determine the moisture content of the wheat: (a) Motomco, (b) Steinlite, (c) Air-oven method, or (d) Tag-heppenstall. When the Tag-heppenstall is used, care should be taken to thoroughly mix the sample prior to testing. If the processor wishes to use any other meter or method to determine moisture, he must first receive approval from the Director.

(6) Enter in Item 4C the total of Items 4A and 4B.

(7) Enter in Item 5A the quantity of wheat processed into food products on which the farm use exemption set forth in § 777.5(b)(1) applies. Enter the actual quantity processed into the food product delivered, or the quantity of wheat obtained by applying the conversion factor provided in § 777.14 to the quantity of food product delivered. Such quantity must be supported by Forms CCC-148 executed by the persons to whom the food product was delivered.

(8) Enter in Item 5B the quantity of wheat processed in bond during the period for which an exemption is claimed under § 777.5(b)(2). Such quantity must be supported by authenticated copies of Customs Form 7521; (i) a copy evidencing the entry of the wheat into a bonded manufacturing warehouse and (ii) a copy evidencing the withdrawal from customs bond for export of the food product manufactured from such wheat.

(9) Enter in Item 5C the quantity of wheat which was produced by and processed for use by a State or State agency during the period for which an exemption is claimed under § 777.5(b)(4). Such quantity(s) must be supported by Forms CCC-148-1 executed by an authorized official or employee of the State or State agency.

(10) Enter in Item 5D the quantity of wheat processed into food products for donation for which an exemption is claimed under § 777.5(b)(5). Such quantity(s) must be supported by Forms CCC-148-2 executed by an authorized official or employee of the Institution receiving the food product(s).

(11) Enter in Item 5E the quantity of wheat processed into food products which is for noncommercial uses as stated in § 777.5(b)(6). (Identify use in the remarks section of Form CCC-160.) Such quantity(s) must be supported by a certificate from the user in such form as approved by the Administrator, ASCS, to cover the food product delivered and describing the use to be made of the food product.

(12) Enter in Item 5F the quantity of wheat processed into nonfood products during the period (see § 777.3(c)). Such quantity shall be the gross weight less any officially determined dockage. If any wheat is processed into nonfood products and no official dockage determination was made and if the food processor reduces the quantity of wheat received for unofficially determined dockage, the dockage for which the reduction is made must be determined in accordance with usually accepted testing methods and rounded down to the nearest half percent. Do not include the weight of any byproduct of food products, or the weight of any screenings or other residue from cleaning the wheat used or to be used by the food processor for processing into food products. Also do not include flour second clears which are not used for human consumption. If a deduction is taken for loss due to unsuitable production, pursuant to § 777.3(c)(4), identify in the "remarks" space on Form CCC-160 the cause of such loss.

(13) Enter in Item 5G the weight of all wheat removed from the processing plant and from any elevator operated by the processor at the processing plant location servicing the processing plant for shipment, sale, delivery to the owner, transfer to other plants or other dispositions as wheat. Such quantity shall be the gross weight of the wheat removed less any officially determined dockage. If any wheat is removed and no official dockage determination made, and if the food processor reduces the quantity of wheat received for unofficially determined dockage, the dockage for which the reduction is made must be determined in accordance with usually accepted testing methods and rounded down to the nearest half percent. Also include in Item 5G the quantity of any wheat destroyed. Do not include the weight of any byproducts of food products or the weight of any screenings or other residue from cleaning wheat used or to be used by the food processor for processing into food products.

(14) Enter in Item 5H the quantity of shrinkage, if any (including shrinkage incurred through aeration), applicable to the weight of wheat received at the processing plant location during the processing report period (Item 4B). Such shrinkage quantity shall not exceed three-fifths of 1 percent of the quantity entered in Item 4B. Any shrinkage deducted of one-eighth of 1 percent or less must be determined on a reasonable basis which can be supported by the processor. Any shrinkage deducted in excess of one-eighth of 1 percent must be based on the most recent representative experience for which the processor has records reflecting his average shrinkage per bushel of wheat received. Shrinkage resulting from artificial drying (through the use of artificial heat), cleaning, or screening of wheat is not eligible for deduction as shrinkage. Processors may, however, reflect in the manner prescribed in Item 5 of this appendix, the loss of weight resulting from artificial drying (through the use of artificial heat) prior to processing in order to permit the wheat to be safely stored.

If the processor can establish his actual shrinkage for the 1964 marketing year, he may elect to enter in Item 5H of his processing report for the period ending June 30, 1965, the actual shrinkage for the 1964 marketing year (not to exceed three-fifths of 1 percent of the total weight of wheat received at the processing plant during the marketing year as reported in Item 4B) less the total shrinkage previously reported. In such case he shall enter in the remarks section of the processing report "shrinkage adjusted based on actual experience for the current marketing year."

Shrinkage claimed for the 1965 and subsequent marketing years must be adjusted to actual shrinkage for the marketing year (not to exceed three-fifths of 1 percent of the total weight of wheat received during the marketing year as reported in Item 4B) in the same manner as provided on an optional basis for the 1964 marketing year. Such adjustment shall be made in the processing report for the period ending June 30 of the marketing year involved.

If the processor elects to take a closing inventory as prescribed in the following paragraph (Item 15) as of his fiscal closing date in lieu of taking a closing inventory as of June 30 of each marketing year, the foregoing provisions applicable to June 30 reporting shall apply to the report covering the fiscal closing date.

(15) Enter in Item 5I the inventory of wheat as of the end of the reporting period, including all stocks of wheat in the processing plant, and in any elevator operated by the processor at the processing plant location servicing the processing plant (including stocks stored for others) which remains in its whole form and has not been pearled, boiled, steeped, or commercially sprouted. Deduct from the unclean quantity included in the ending inventory any officially determined dockage contained in the equivalent quantity of the last received wheat. If the last received equivalent quantity includes any wheat received on a gross weight basis and no official dockage determination was made, but the dockage content was unofficially determined in accordance with the usually accepted testing methods, the unofficial dockage (rounded down to the nearest half percent) shall be deducted from the quantity so received.

If accurate book inventory records are maintained, such book quantities may be used except as of June 30, or the processor's own fiscal year closing date, whichever is applicable for each marketing year. As of whichever of such dates is applicable, the quantities of such wheat shall be determined by weighup or by accurate measurement of the wheat stored. Once the ending inventory is determined by weighup, it shall continue to be determined on a weighup basis for each marketing year thereafter unless prior approval to change is received from the Director for good cause shown. The processor may

elect to use a fiscal closing date other than June 30, of each year.

When such an election is taken, the processor must notify the Commodity Office in writing of his election and specify the fiscal closing date to be used. Such notice must be made at least 30 days in advance of the actual fiscal closing date. An inventory as prescribed in the preceding paragraph of this item may be required as of June 30 of any marketing year if there is to be a change in the cost of marketing certificates for the succeeding marketing year.

If accurate book inventory records are not maintained, the quantities of wheat for each reporting period shall be determined by weighup or by accurate measurement of the wheat.

(16) Enter in Item 5J the total of Items 5A through 5I.

(17) Enter in Item 6 the result obtained by deducting the quantity shown in Item 5J from the quantity shown in 4C.

(18) Enter in Item 7D the cost of wheat marketing certificates (domestic) required. Obtain the amount by multiplying the quantity shown in Item 6 by the applicable cost of certificates as specified in § 777.5(a).

(19) Enter in Item 7A the amount of certificates enclosed. Also enter the certificate serial numbers.

(20) Enter in Item 7B the amount of remittance enclosed.

(21) Enter in Item 7C the amount of certificates previously surrendered to CCC for the specific processing report period and the date of surrender.

(22) In the case of a food processor who ages beverage distilled spirits manufactured by him from wheat and who has filed the undertaking provided in § 777.11(e), enter in the remarks section the identifying serial numbers of each barrel in which the beverage distilled spirits are placed for aging. The reverse side of the form may be used if necessary.

(23) The certification shall be executed by an authorized official of the food processor. Also enter the title of the official and the date in the spaces provided.

APPENDIX III—INSTRUCTIONS FOR PREPARATION OF PROCESSING REPORT—CONVERSION FACTOR BASIS

Food processors reporting on a food product conversion factor basis shall submit an original and one copy of the Processing Report-Conversion Factor Basis, Form CCC-159, as set forth in § 777.12(a). Retain a copy of the report and supporting certifications and documents in your files. Prepare the report as follows:

(1) Enter in Item 1 the processor's name and address.

(2) Enter in Item 2 the processor number.

(3) Enter in Item 3 the processing report period beginning and ending dates.

(4) Enter in Item 4 the names of the respective food products processed in the plant during the reporting period, if the names of these products are not preprinted on the form.

(5) Enter in Item 5 for each food product processed during the reporting period the total quantity in hundredweights which was processed. (When flour is produced, include the weight of all clears.) Do not include any food product which prior to marketing or removal from the plant (whichever occurs first) becomes unsuitable as a food product and is not used for human consumption.

(6) Enter in Item 6A the hundredweight of food product processed on which the farm-use exemption set forth in § 777.5(b)(1) applies. Such weight must be supported by Forms CCC-148 executed by the person to whom the food product was delivered.

(7) Enter in Item 6B the hundredweight of the food product processed in bond during the period for which an exemption is claimed under § 777.5(b)(2). Such quantity must be supported by authenticated copies of Customs Form 7521; (i) a copy evidencing the entry of the wheat into a bonded manufacturing warehouse and (ii) a copy evidencing the withdrawal from customs bond for export of the food product manufactured from such wheat.

(8) Enter in Item 6C the hundredweight of food product processed from wheat which was produced by and processed for use by a State or State agency during the period for which an exemption is claimed under § 777.5(b)(4). Such quantity(s) must be supported by Forms CCC-148-1 executed by an authorized official or employee of the State or State agency.

(9) Enter in Item 6D the hundredweight of food product processed for donation for which an exemption is claimed under § 777.5(b)(5). Such quantity(s) must be supported by Forms CCC-148-2 executed by an authorized official or employee of the institution receiving the food product(s).

(10) Enter in Item 6E the hundredweight of food product processed which is for noncommercial uses as stated in § 777.5(b)(6). (Identify use in the remarks section of Form CCC-159.) Such quantity(s) must be supported by a certificate from the user in such form as approved by the Administrator, ASCS, to cover the food product delivered and describing the use to be made of the food product.

(11) If the weight of any additional ingredient set forth in paragraph (b) of § 777.14 is included in the weights entered in Item 5, enter in Item 6F such total weight minus the total weight of any such ingredients included in the weights entered in A, B, C, D, and E of this Item 6. The food processor must maintain records on an individual additional ingredient basis which substantiates any entry in this Item 6F.

(12) Enter in Item 6G the total of Items 6 A, B, C, D, E, and F.

(13) Enter in Item 7A the difference between Item 5 and 6G.

(14) Enter in Item 7B the applicable conversion factor from § 777.14.

(15) Enter in Item 7C the result of Item 7A times Item 7B.

(16) Enter the total of Item 7 in the space provided.

(17) Enter in Item 8 any applicable remarks.

(18) Enter in Item 9D the cost of wheat marketing certificates (domestic) required. Obtain the amount by multiplying the quantity shown in Item 7C by the applicable cost of certificates as specified in § 777.5(a).

(19) Enter in Item 9A the amount of certificates enclosed. Also enter the certificate serial numbers.

(20) Enter in Item 9B the amount of remittance enclosed.

(21) Enter in Item 9C the amount of certificates previously surrendered to CCC for the specific processing report period and the date of surrender.

(22) The certification shall be executed by an authorized official of the food processor. Also enter the title of the official and the date in the space provided.

APPENDIX IV—INSTRUCTIONS TO INDUSTRIAL USERS FOR PREPARATION OF INDUSTRIAL USERS PRODUCTION REPORT AND CLAIM FOR REFUND FORMS

Industrial Users wishing to claim a refund of the cost of domestic certificates purchased by processors to cover wheat used in processing flour second clears used in a product not for human consumption shall submit such claims on Form CCC-161, Industrial Users Production Report and Claim for Refund, to the Commodity Office as provided in § 777.19. A copy of each Form CCC-161 shall be retained by the industrial user. Instructions for the completion of Form CCC-161 are as follows:

(The numbers and letters listed below correspond with the numbers and letters on the form.)

(1) Heading. (A) Enter name and mailing address.

(B) Enter the industrial user number assigned on registration Form CCC-149.

(C) Enter the marketing year. Prepare separate Forms CCC-161 for each marketing year. July 1 begins the marketing year. The marketing year shown on Form CCC-165 and/or CCC-165-1 shall determine the marketing year under which the flour second clears are to be reported.

(D) Enter the reporting period dates. (See § 777.19(d).)

(2) *Inventory of flour second clears.* Enter in hundredweights.

(A) Enter the quantity on hand at the end of the preceding reporting period. Bring forward from Item 2I of the preceding Form CCC-161.

(B) Enter the quantity received at the plant during the reporting period covered by the report. Such quantity must not be in excess of the quantity shown on Forms CCC-165 and/or CCC-165-1. If during one reporting period there are involved flour second clears identifiable to more than one marketing year, separate Forms CCC-161 for each marketing year must be prepared.

(C) Enter the total of Items 2A and 2B.

(D) Enter the quantity of shipments which did not enter production.

(E) Enter the quantity used during nonrefund production periods as shown in applicable Items 4F.

(F) Enter the quantity of flour second clears used as an additive to products shown in Item 4A. Flour second clears so used must be entered in this item. (Example, addition of flour second clears to gluten.)

(G) Enter quantity of flour second clears used as an additive to products shown in Item 4C. Flour second clears so used must be entered in this item. (Example, addition of flour second clears to animal feed manufactured from starch.)

(H) Enter the quantity which was a casualty loss and did not enter production. (See § 777.16.)

(I) Enter the quantity on hand at the end of the reporting period.

(J) Enter the total of Items 2D through 2I.

(K) Enter the difference between Items 2C and 2J.

(3) *Kind of clears used.* Enter in hundredweight the kind of clears used during the reporting period. If more than one Form CCC-161 is submitted because of the use (during the same reporting period) of clears identified to more than one marketing year, prorate the quantity of each kind of clears used between the marketing years according to the percentage relationship between the quantities shown in Item 2K of each separate marketing year report. Enter the prorated quantities.

(A) Enter the quantity of flour second clears produced from (1) hard wheat, (2) soft wheat, (3) durum, and (4) the total thereof on the basis of information as to type of wheat shown on the Forms CCC-165 and CCC-165-1. The total must agree with the sum of Items 2E, 2F, 2G, and 2K. If blended flour second clears are shown on the Form(s) CCC-161, indicate the quantity of blended clears used.

(B) Enter the quantity of (1) imported clears and (2) other non-qualifying clears.

(4) *Products manufactured from clears—production periods.* Check appropriate box to indicate whether refund or nonrefund period. See § 777.19(h)(3). If more than one production period is reported, also use

reverse side of form and show the beginning and ending dates of each production period. If flour second clears used during the reporting period had been processed from wheat in more than one marketing year, prorate the hundredweight of product produced during the reporting period between the Forms CCC-161 prepared for the different marketing years. Use the same percentage as used to distribute the quantities required to be entered in Item 3 of each Form CCC-161.

(A) List the food products produced during the production period in whole or in part from flour second clears and nonqualifying clears. Enter the weight of the food products produced. Determine such weight by subtracting from the gross weight of each food product produced (i) the weight of all ingredients other than clears added to the product produced from clears such as an additive to gluten, (ii) the weight of flour second clears used as an additive (Item 2F), and (iii) the weight of nonqualifying clears used as an additive determined in the same manner as in Item 2F for flour second clears; and adjusting the remainder to a 12% moisture basis.

(B) Enter the total of the weights entered under Item 4A.

(C) List the products not for human consumption produced during the production period in whole or in part from flour second clears and nonqualifying clears. Enter the weight of the products not for human consumption produced. Determine such weight by subtracting from the gross weight of each product not for human consumption produced (i) the weight of all ingredients other than clears added to the product produced from clears such as an additive to starch, (ii) the weight of flour second clears used as an additive (Item 2G), and (iii) the weight of nonqualifying clears used as an additive determined in the same manner as in Item 2G for flour second clears; and adjusting the remainder to a 12% moisture basis.

(D) Enter the total of the weights entered under Item 4C.

(E) Enter the total of Items 4B and 4D.

(F) Enter quantity of flour second clears used for the production period. Total of items 4F for all refund production periods reported on form must equal the quantity shown in item 2K. Total of items 4F for all no-refund production periods reported on form must equal the quantity shown in item 2E.

(G) Enter the percentage relationship of products not for human consumption to all products produced during the refund period: Item 4D divided by Item 4E.

(H) Enter the quantity of flour second clears for which refund is being applied. Multiply Item 4F by 4G. For refund periods II through V, if applicable, bring the entries forward to applicable period shown under Item 4H of period I on face of form.

(I) Enter quantity shown in Item 2G.

(J) Enter the quantity shown in Item 2H.

(K) Enter total of Items 4H, 4I, and 4J.

(5) *Amount of refund claimed.* Enter amount determined by multiplying Item 4K by the applicable refund rate as specified in § 777.19(e).

(6) *Certification.* The certificate shall be dated and executed by an authorized official of the industrial user.

APPENDIX V—INSTRUCTIONS FOR PREPARATION OF INDUSTRIAL USERS PRODUCTION REPORT AND CLAIM FOR REFUND FORMS (FOR USERS WHO PRODUCE NONFOOD PRODUCTS ONLY)

Industrial users manufacturing nonfood products only, who wish to claim a refund of the cost of domestic certificates purchased by processors to cover wheat used in processing flour second clears used in a product not for human consumption may submit such claims on Form CCC-161-1, Industrial Users Production Report and Claim for Refund (for users who produce nonfood products only), to the Commodity Office as provided in § 777.19. A copy of each Form CCC-161-1, shall be retained by the industrial user. Instructions for the completion of Form CCC-161-1 are as follows:

(The numbers and letters listed below correspond with the numbers and letters on the form.)

(1) *Heading.*

(A) Enter name and mailing address.

(B) Enter the industrial user number assigned on Registration Form CCC-149.

(C) Enter the marketing year. Prepare separate Forms CCC-161-1 for each marketing year. July 1 begins the marketing year. The marketing year shown on Form CCC-165 and/or CCC-165-1 shall determine the marketing year under which the flour second clears are to be reported.

(D) Enter the reporting period dates. (See 777.19(d).)

(2) *Inventory of flour second clears.* Enter in hundredweights.

(A) Enter the quantity on hand at the end of the preceding reporting period. Bring forward from Item 2F of the preceding Form CCC-161-1.

(B) Enter the quantity received at the plant during the reporting period covered by the report. Such quantity must not be in excess of the quantity shown on Forms CCC-165 or CCC-165-1. If during one reporting period there are received flour second clears identifiable to more than one marketing year, separate Forms CCC-161-1 for each marketing year must be prepared.

(C) Enter the total of Items 2A and 2B.

(D) Enter the quantity of shipments which did not enter production.

(E) Enter the quantity which was a casualty loss and did not enter production. (See § 777.16.)

(F) Enter the quantity on hand at the end of the reporting period.

(G) Enter the total of Items 2D through 2F.

(H) Enter the difference between Items 2C and 2G.

(3) *Kind of clears used.* Enter in hundredweight the kind of clears used during the reporting period. If more than one Form CCC-161-1 is submitted because of the use (during the same reporting period) of clears identified to more than one marketing year, prorate the quantity of each kind of clears used between the marketing years according to the percentage relationship between the quantities shown in Item 2H of the report for each separate marketing year report. Enter the prorated quantities.

(A) Enter the quantity of flour second clears used which were produced from (1) hard wheat, (2) soft wheat, (3) Durum or (4) if blended clears are received and used, enter the quantity used. (5) Enter the total of (1), (2), (3), and (4). The quantities shown in (1), (2), (3), and (4) must be on the basis of information as to type of wheat and/or clears shown on the Forms CCC-165 and CCC-165-1. The total must agree with the quantity shown in Item 2H.

(B) Enter the quantity of (1) imported clears and (2) other nonqualifying clears.

(4) *Products manufactured from clears.*

(A) List the products not for human consumption produced during the production period in whole or in part from flour second clears and nonqualifying clears. Enter the weight of the flour second clears used to produce the products not for human consumption.

(B) Enter the total of the weights shown under Item 4A.

(C) Enter the quantity shown in Item 2H.

(D) Enter the quantity shown in Item 2E.

(E) Enter total of Items 4C and 4D.

(5) *Amount of refund claimed.* Enter amount determined by multiplying Item 4E by the refund rate as specified in § 777.19(e).

(6) *Certification.* The certificate shall be dated and executed by an authorized official of the industrial user.

INTERPRETATION

The following interpretation of § 777.13(a) and paragraph 13, Appendix II, of the Processor Wheat Marketing Certificate Regulations (31 F.R. 13502) is issued. The question has been raised by a person processing wheat into cereal products as to whether he may make certain deductions in computing his certificate liability under the regulations. The processor is computing his liability on the weight of wheat basis under § 777.13 of the regulations and has requested permission to make deductions for the weight of small kernels which are separated from the wheat used in his processing operation and then removed from the plant for use as animal feed.

The cereal manufacturer has stated that the operation is carried on as follows: After the wheat received in the cereal plant is cleaned, the kernels are sized by use of special screens. The small kernels separated from the remainder of the wheat are weighed and then transferred from the processing plant to another plant where it is used in the manufacture of animal feed. The question is presented whether the weights so obtained supported by scale tickets or other documentary evidence may be deducted on Form CCC-160, Processing Report—Weight of Wheat Basis, in computing the weight of wheat subject to certificate liability.

It has been concluded that the processor may make a deduction from the weight of wheat subject to certificate liability for the weight of the small kernels obtained in the operation described above and transferred from the plant for use in animal feed. Section 777.13(a) provides:

General. Food processors reporting the quantity of wheat processed into food products on the basis of the weight of wheat processed, shall complete Form CCC-160, Processing Report—Weight of Wheat Basis, for each reporting period in accordance with detailed instructions set forth in Appendix II of this part. Determinations of the weight of wheat processed into food products shall be made in the manner prescribed in Appendix II. No deductions may be made for any byproducts of a food product obtained in the processing of the wheat.

Appendix II provides in paragraph (13) for the processor to enter in Item 5G of Form CCC-160, the weight of all wheat removed from the processing plant (and from any elevator operated by the processor at the processing plant location servicing the plant) for shipment, sale, delivery to the owner, transfer to other plants, or other dispositions as wheat. It further states: "Do not include the weight of any byproducts of food products or the weight of any screenings or other residue from cleaning wheat used or to be used by the food processor for processing into food products."

Our conclusion is based upon the following considerations which apply to the processor's operation: (1) The small kernels comply with the definition of wheat which appears in § 777.3(a), i.e., they are wheat as defined in the Official Grain Standards of the United States; (2) the foreign material, damaged kernels and other defects in the small kernels, are not greater than such defects in the wheat from which such small kernels were removed; and (3) the small kernels can be used commercially in the manufacture of flour and other food products. The small kernels are separated from the wheat used to make cereal because they are not as suitable for the type of cereal product manufactured by the food processor as the remainder of the wheat which was used in the processing operation. Accordingly, from the evidence supplied, it has been determined that the small kernels are not byproducts or screenings or other residues obtained in the cleaning of wheat used in the processing operation. If such kernels were within that category, they would not be eligible to serve as a deduction from the certificate liability of the cereal manufacturer.

INTERPRETATION

The following interpretation of paragraph 13, Appendix II, of the Republication of the Processor Wheat Marketing Certificate Regulations (31 F.R. 13502, as amended) is issued (7 CFR 777.13(a)). This interpretation shall be in addition to the interpretation of this paragraph published in the FEDERAL REGISTER of March 21, 1967 (32 F.R. 4305).

The question has been raised by a processor who calculates his certificate liability on the basis of the weight of wheat processed as to whether in making deductions for the weight of wheat removed for shipment, sale, transfer, or other disposition as wheat he can include in the deduction the loss previously incurred in the weight of such wheat as a result of artificial drying in order to permit it to be safely stored.

Paragraph 13 of Appendix II provides for the deduction from certificate liability of the weight of wheat removed from the plant in the form of wheat in the following language:

(13) Enter in item 5G the weight of all wheat removed from the processing plant and from any elevator operated by the processor at the processing plant location servicing the processing plant for shipment, sale, delivery to the owner, transfer to other plants or other dispositions as wheat. Such quantity shall be the gross weight of the wheat removed less any officially determined dockage * * *.

This question arises with respect to computations in reports for wheat received in the processing plant and any elevator operated by the processor at the plant location servicing the plant prior to the first processing report period beginning on and after February 8, 1968, when Amendment 6 to the regulations became effective. The amendment enables a processor who artificially dried wheat to permit it to be safely stored, to calculate the weight of wheat used in processing a food product on the basis of the gross weight, less dockage, after drying. Thus, the amendment provides for a deduction to be made for losses due to artificial drying on all wheat received beginning with the date specified above.

Prior to such amendment, the processor was not permitted to make deductions for losses in the weight of wheat used in processing food products that resulted from artificial drying. However, it was not the intention to preclude a processor from making a deduction for losses in weight through artificial drying applicable to wheat which was removed from the plant as wheat and not used in the processing operation. Accordingly, a processor may include in the weight of wheat which he deducts from his certificate liability under paragraph 13 of Appendix II prior to the period indicated above an adjustment for losses that previously had occurred to the wheat as a result of artificial drying to permit it to be safely stored.

Any processor who wishes to make such an adjustment should submit to the Director, Kansas City ASCS Commodity Office a corrected report for the processing report period involved. If the processor wishes to make an adjustment for more than one period he may file a consolidated corrected report. He should accompany the corrected report with a letter of explanation, together with any evidence he may wish to provide, showing how the figures were computed and demonstrating that the weight adjustment claimed was actually removed from the wheat referred to in paragraph 13 of Appendix II. This interpretation applies to losses resulting from artificial drying through the rise of artificial heat. Specific provision is made in paragraph 14 of Appendix II for allowances to cover normal shrinkage, including shrinkage incurred through aeration.

INTERPRETATION

The following interpretation is issued of 7 CFR 777.3(u) (§ 777.3(u) of the Republication of the Processor Wheat Marketing Certificate Regulations (33 F.R. 14676, as amended)).

The question has been raised by a processor who produces flour second clears whether clears produced from a blend of wheat grown in the United States and wheat grown outside the United States would be eligible for refund of certificate costs.

The definition of flour second clears (§ 777.3(u)) excludes flour clears produced from wheat grown outside the United States. This definition states in part the following:

"(u) 'Flour second clears,' means a coproduct of patent flours (including Durum patent flour) which is produced in a 72 percent extraction rate type of milling operation in the United States from wheat produced in the United States and which meets the requirements of this paragraph." * * *

Under this definition, in the case of clears produced from a blend of domestic and imported wheat, the portion of the clears attributable to domestic wheat contained in the blend may qualify as flour second clears eligible for a refund if it otherwise meets the requisite provisions of the regulations. The portion of the clears attributable to the imported wheat contained in the blend cannot qualify for a refund since it was not processed from wheat produced in the United States.

Section 777.18(c) of the regulations provides with certain exceptions that if a processor blends flour second clears with nonqualifying clears the entire blended quantity shall be ineligible for a refund. This section is inapplicable to the instant case since it relates only to the blending of clears obtained in the processing operation and not to the blending of wheat which occurs prior to processing.

If a processor who has produced clears from a blend of domestic and imported wheat wishes to make eligible for a certificate refund the quantity of flour second clears obtained from a blend of domestic and imported wheat he must provide a certification on Form CCC-165 for such eligible flour second clears as required in § 777.18(b). The quantity for which the certification is provided shall be determined by multiplying the percentage of the domestic wheat in the blend from which the clears were produced by the total clears obtained in the processing operation which meets the definition of flour second clears including the clears which meet the definition except as to the origin of wheat from which they were produced. For example, if a blended lot of wheat contains 90 percent domestic and 10 percent imported wheat from which are produced a total of 800 cwt. of clears which are sold to an industrial user and which meet the definition of flour second clears (including the clears which meet the definition except as to the origin of wheat from which produced), the processor may provide a certification on the form for 720 cwt. (i.e., 90 percent of the total of 800 cwt.). The processor must also show on the bottom of the form the quantity of domestic and imported wheat contained in the blend from which the clears were produced and the total clears produced from the blend which are delivered with the Form CCC-165 and which meet the requirements of the definition of flour second clears (except as to the origin of the wheat from which the clears were produced).

Section 777.18(d) specifies the records necessary to support each Form CCC-165 issued. This section states in part as follows:

"(d) *Records.* The processor shall retain a copy of all Forms CCC-165 which he issues. Each Form CCC-165 shall be identified to its respective invoice number and quantity invoiced. To support the certifications, the processor must retain laboratory reports and mill records which identify production runs by date of processing, lot number, type of wheat processed, and which can be identified to the flour second clears covered by an invoice." * * *

Accordingly, when blended wheat is processed, the processor must identify the Forms CCC-165 as required above and show in his records the types of wheat contained in the blend, including, if applicable, the quantities or percentages of imported wheat.

If sales are made to distributors, the distributor shall issue Forms CCC-165-1 Distributor Certification, Flour Second Clears, in the same manner as stated above for the processor.

The industrial users are cautioned to show as flour second clears received, on item 3B of the claim forms (Forms CCC-161 or 161-1, Industrial Users Production Report and Claim for Refund) only that quantity covered by the certification on Form CCC-165 or 165-1. (See paragraph (2)(B) of appendices IV and V.)

NOTE: The recordkeeping and reporting requirements of Part 777 have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Signed at Washington, D.C., on October 22, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

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