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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases, and Other Operations

PART 421—GRAINS AND RELATED COMMODITIES

NOTICE REVISING SET-OFF PROVISIONS APPLICABLE TO RESEAL PRICE SUPPORT LOAN PROGRAMS

Notwithstanding the provisions contained in the reseal price support bulletins with regard to set-offs the following set-off provisions shall apply:

NOTE: (a) If any installment or installments on any loan made available by C. C. C. on farm-storage facilities or mobile drying equipment are payable, under the provisions of the note evidencing such loan, out of any amount due the producer under the program provided for in this subpart, the producer must designate C. C. C. or the lending agency holding such note as payee of such amount to the extent of such installments, but not to exceed that portion of the amount remaining after deduction of service charges and amounts due prior lienholders.

(b) If the producer is indebted to C. C. C., or if the producer is indebted to any other agency of the United States, and such indebtedness is listed on the county debt record, amounts due the producer under the program provided for in this subpart, after deduction of amounts payable on farm-storage facilities or mobile drying equipment and other amounts provided in paragraph (a) of this note, shall be applied, as provided in the Secretary's Set-off Regulations, 7 CFR Part 13 (23 F. R. 3757), to such indebtedness.

(c) Compliance with the provisions of this note shall not deprive the producer of any right he might otherwise have to contest the justness of the indebtedness involved in the set-off action either by administrative appeal or by legal action.

The program provisions affected are contained in the following supplements to the 1957 C. C. C. Grain Price Support Bulletin 1: Supplement 2, Barley, 23 F. R. 1774; Supplement 3, Corn, 23 F. R. 1775; Supplement 2, Grain Sorghums, 23 F. R. 2964; Supplement 2, Oats, 23 F. R. 1777 and Supplement 3, Wheat, 23 F. R. 1669; in the following supplements to the 1956 C. C. C. Grain Price Support Bulletin 1: Supplement 4, Barley, 23 F. R. 3223; Supplement 4, Corn, 23 F. R. 2089; Supplement 4, Oats, 23 F. R. 2962 and Supplement 4, Wheat, 23 F. R. 1771; and in 1955 C. C. C. Grain Price Support Bulletin 1, Supplement 5, Corn, 23 F. R. 2961.

NOTE: This notice applies to § 421.1156, 21 F. R. 4038; § 421.1610, 21 F. R. 3997; and § 421.2210, 22 F. R. 2321.

(Sec. 4, 62 Stat. 1070 as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 301, 401, 63 Stat. 1031; 15 U. S. C. 714c, 7 U. S. C. 1441, 1447, 1421)

Issued this 28th day of October 1958.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President, Commodity Credit Corporation.

[F. R. Doc. 58-9101; Filed, Oct. 31, 1958; 8:54 a. m.]

[1958 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 4, Barley]

PART 421—GRAINS AND RELATED COMMODITIES

SUBPART 1958-CROP BARLEY LOAN AND PURCHASE AGREEMENT PROGRAM

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 23 F. R. 3492, 5317, 6174, and 7876 containing the specific requirements for the 1958-Crop Barley Price Support Program are hereby amended as follows:

1. Section 421.3078 (c) (1) is amended to make barley grading No. 5 eligible for price support so that the amended subparagraph reads as follows:

§ 421.3078 *Eligible barley.* * * *

(c) * * *

(1) The barley must be of any class grading No. 5 or better (or No. 5 Garlicky or better), except that Western Barley shall have a test weight of not less than 40 pounds per bushel.

2. Section 421.3080 (c) is amended by extending the schedule therein to apply to barley testing as low as 36 pounds

(Continued on p. 8441)

CONTENTS

FEDERAL REGISTER

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CONTENTS—Continued

CONTENTS—Continued

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

per bushel so that the amended paragraph reads as follows:

§ 421.3080 *Determination of quantity.* * * *

(c) When the quantity of barley is determined by measurement, a bushel shall be 1.25 cubic feet of barley testing 48 pounds per bushel. The quantity determined shall be the following percentages of the quantity determined for 48-pound barley:

For barley testing:	*Percent*
50 pounds or over	104
49 pounds or over, but less than 50 pounds	102
48 pounds or over, but less than 49 pounds	100
47 pounds or over, but less than 48 pounds	98
46 pounds or over, but less than 47 pounds	96
45 pounds or over, but less than 46 pounds	94
44 pounds or over, but less than 45 pounds	92
43 pounds or over, but less than 44 pounds	90
42 pounds or over, but less than 43 pounds	88
41 pounds or over, but less than 42 pounds	85
40 pounds or over, but less than 41 pounds	83
39 pounds or over, but less than 40 pounds	81
38 pounds or over, but less than 39 pounds	79
37 pounds or over, but less than 38 pounds	77
36 pounds or over, but less than 37 pounds	75

3. Section 421.3083 (d) is amended to provide a discount for barley grading No. 5 so that the amended paragraph reads as follows:

§ 421.3083 *Support rates.* * * *

(d) *Discounts.* The discount for barley which grades No. 3 shall be 3 cents per bushel, for No. 4, 6 cents per bushel, and for No. 5, 18 cents per bushel. The support rates for barley of the class "Mixed Barley" shall be 2 cents per bushel less than the support rates for barley of the Classes Barley and Western Barley. In addition to any other applicable discounts, a discount of 10 cents per bushel shall be applied to barley grading "Garlicky".

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 301, 401, 63 Stat. 1054, sec. 308, 70 Stat. 206; 15 U. S. C. 714c; 7 U. S. C. 1421, 1447)

Issued this 28th day of October 1958.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President, Commodity Credit Corporation.

[F. R. Doc. 58-9103; Filed, Oct. 31, 1958; 8:55 a. m.]

[1958 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 3, Flaxseed]

PART 421—GRAINS AND RELATED COMMODITIES

SUBPART—1958-CROP FLAXSEED LOAN AND PURCHASE AGREEMENT PROGRAM

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 23 F. R. 3647, 6771 and 8085, and containing the specific requirements for the 1958-Crop Flaxseed Price Support Program are amended as follows:

1. Section 421.3483 (c) is amended by adding to the list of basic county support rates, "Nebraska—Box Butte County, $2.44 per bushel."

2. Section 421.3486 (h) is amended by adding the following counties and rates of payment:

CALIFORNIA

County:	*Amount per bushel (cents)*
Riverside	1
San Benito	1
San Joaquin	1
Yolo	1

(Sec. 4, 62, Stat. 1070, as amended; 15 U. S. C. 714b. Interprets or applies sec. 5, 62 Stat. 1072, secs. 301, 401, 63 Stat. 1054; 15 U. S. C. 714c, 7 U. S. C. 1447, 1421)

Issued this 28th day of October 1958.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President, Commodity Credit Corporation.

[F. R. Doc. 58-9102; Filed, Oct. 31, 1958; 8:55 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7005]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

VANTAGE PRESS, INC., ET AL.

Subpart—*Advertising falsely or misleadingly:* § 13.15 *Business status, ad-*

vantages, or connections: Connections or arrangements with others; cooperative nature; personnel or staff; service; size and extent; unique or special status or advantages; § 13.20 *Comparative data or merits;* § 13.60 *Earnings and profits;* § 13.70 *Fictitious or misleading guarantees;* § 13.105 *Individual's special selection or situation;* § 13.143 *Opportunities;* § 13.205 *Scientific or other relevant facts;* § 13.225 *Services.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Vantage Press, Inc., et al., New York, N. Y., Docket 7005, October 3, 1958]

In the Matter of Vantage Press, Inc., a Corporation, and Alan F. Pater and Arthur Kleinwald, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a New York City book publisher with making false claims about its cooperative publishing plans in soliciting manuscripts from authors, concerning the author's investment, royalties, its size and success, superiority over its competitors, among other things.

Following acceptance of an agreement containing a consent order, the hearing examiner made his initial decision including order to cease and desist and dismissing certain charges. Denying the request of respondents' counsel that the order be modified by deletion from subsection "c" of paragraph "1", on the ground that respondents' two major competitors were not subject to a similar prohibition, the Commission on October 3 adopted the initial decision as the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Vantage Press, Inc., a corporation, and its officers, and respondents Alan F. Pater, and Arthur Kleinwald, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of contracts for the printing, promotion, sale and distribution of books and the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that:

(a) They operate a cooperative publishing plan in which they share with the author in the expense of printing, binding, promotion and sale of the book or that they are partners with the author;

(b) The author's investment is limited to the first edition unless such is the fact;

(c) Any payment made to an author based on sales of the author's book is a royalty unless and until the author has recouped the sum of money paid under the contract therefor;

(d) An author receives a return of four or any other number of times as much under their contract as would be paid the author under a "standard" contract;

(e) An author will recoup his or her entire investment when publishing through them, or will recoup the entire investment when the first edition sells out unless such is the fact;

(f) A second or any other number edition of an author's book will be required, or that their promotion will create such a demand for an author's book that a second and subsequent edition will be required to fill such demand;

(g) An author will receive 33⅓ percent or any other percentage on all sales of books of subsequent editions unless such is the fact or that the sum paid an author by them is more than the author would receive from any competitor.

2. Representing directly or indirectly that:

(a) They only accept manuscripts with merit and sales appeal possibilities;

(b) All manuscripts accepted by them have been determined to have merit and sales appeal.

3. Representing directly or indirectly that:

(a) They have their own sales force of book store salesmen in key cities of the United States;

(b) They conduct an aggressive sales promotion with representatives,

(1) Calling on leading book stores and wholesalers in key cities in the United States,

(2) Displaying their books at conventions,

(3) Supplying posters and circulars to dealers,

(4) Arranging for autograph parties for their authors,

unless such is the fact;

(c) They have sales representatives who canvass bookstores, libraries, organizations and the reading public;

(d) All avenues of publicity are used in conducting the promotion and sales campaigns for their author's books, or misrepresenting the avenues used or the extent of the promotion and sales campaigns actually used;

(e) They have their own sales force which makes periodic calls on various book outlets throughout the year unless such is the fact;

(f) The sales of $500,000 worth of books, or any other amount, in 1955 or any given year, is proof that they have an aggressive sales staff, or that the sale of $500,000 worth or any other amount of books thereby earned and resulted in the payment of high royalties to their authors;

(g) They make all possible efforts to sell their books in the United States or in foreign countries;

(h) Their publishing plan has major or any other advantages over competitors in:

(1) Assuring the author a specific time of publication or that they publish an author's book in a shorter period of time than their competitors;

(2) Assure an author a beautiful book comparable to the finest published;

(3) Guaranteeing an author 40 percent or any other percentage royalty on every book or that an author will receive 4 to 8 or any other number of times as much money by publishing through them than through their competitors;

(4) That they bring an author's book to the attention of critics, the trade, the public, movie studios or reprint houses to any greater degree or beneficial manner than do their competitors;

(5) Guaranteeing an author national advertising for his or her book unless such is the fact;

(6) That the cost of their services is less than that of competitors, or is the same as that of competitors for less service.

(i) Their direct mail and publication advertising results in the successful promotion of an author's book;

(j) They have salesmen whose visits or calls on dealers and wholesalers are coordinated with the distribution of direct mail promotional advertising;

(k) They will advertise and promote an author's book without the payment of any additional sum over that listed in the contract or that the promotion and advertising of an author's book is at their expense rather than that of the author;

(l) They give advanced publicity releases to each of their authors when a manuscript is accepted for publication, or that those released are sent to all newspapers, magazines, radio and television stations likely to be interested in the specified book or books in excess of the releases actually sent;

(m) Their efforts to arrange for a personal appearance of their authors on radio and TV programs will result in the personal appearance of each author on radio and TV programs or will result in the sale of the promoted book;

(n) They send any number of copies of their title books to book review media throughout the United States in excess of the number of those actually so sent;

(o) Their sending out any particular number of "review" copies to various review media and critics insures reviews of their authors' books;

(p) The United Press Review features their book reviews in 1,500 papers or any number of papers in excess of those in which the same appeared;

(q) That any pictorial presentation of a window display, including posters, is typical of the promotion provided for their authors' books unless such is the fact;

(r) They have their own art department, or that their business is larger or has more employees and departments than actually exists.

4. Representing directly or indirectly that:

(a) They have a separate department engaged exclusively in the sale of subsidiary rights, or that they have a department in constant touch with reprint houses, motion picture studios, newspaper syndicates, television and radio

stations, or other organizations to or through which subsidiaries rights can be sold;

(b) They have sold motion picture rights to any of their authors' books to any motion picture studio unless such is the fact;

(c) Their Hollywood, California branch office was established for the purpose of working closely with influential agents and executives who choose the books for motion pictures;

(d) They are the only subsidy publisher with a California branch office;

(e) Outlets for subsidiary rights require that a manuscript be accepted for publication or already published as a prerequisite for considering same;

(f) They have a long list of sales successes to their credit or that any number of books published through their subsidy plan were successful unless sufficient number of copies were sold to repay the author the subsidy paid by the author.

5. Representing directly or indirectly that they have an office or offices located in any place or places other than where they actually have such an office or offices.

It is further ordered, That the charge in section 1 of Paragraph Six of the Complaint that respondents represent or have represented that the entire first edition of an author's book will sell out, and the charge in subsection (j) of section 3 of Paragraph Seven of the Complaint that respondents did not distribute 500,000 copies of promotional material over a twelve-month period, are hereby dismissed.

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

It is further ordered, That the respondents, Vantage Press, Inc., a corporation, and Alan F. Pater and Arthur Kleinwald, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

Issued: October 3, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-9069; Filed, Oct. 31, 1958; 8:47 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter E—Organized Reserves

PART 562—RESERVE OFFICERS' TRAINING CORPS

MISCELLANEOUS AMENDMENTS

1. Section 562.14 is revised to read as follows:

§ 562.14 *Nonestablishment of other than senior units.* (a) The Department of the Army does not plan to establish additional ROTC units in categories which are not directly officer producing. Units in those categories already established will be continued in the program so long as they continue to meet the requirements for retention of ROTC units (§ 562.15).

(b) New junior division units and subunits will not be established. However, a subunit within a multiple junior division unit may be transferred to another school within the school system, upon approval of the Army commander, when the following conditions prevail:

(1) Transfer can be effected without additional cost to the Army.

(2) Transfer will not require additional personnel spaces.

(3) There will be no increase in the number of schools within the multiple junior division unit conducting ROTC training.

(4) Each transfer will be considered on an individual basis and may be authorized when the school which is being considered for the subunit offers advantages to the ROTC program such as:

(i) Better facilities for ROTC training.

(ii) Increased enrollment.

(iii) More favorable attitude of student body to ROTC training.

(iv) Greater support by school given to ROTC program.

(5) Upon approval of such transfer, the Army commander will immediately notify The Adjutant General, Headquarters, Department of the Army, Washington 25, D. C., Attn: AGPB-O, through Commanding General, United States Continental Army Command, as follows:

(i) The name and location of the school to which the subunit is being transferred.

(ii) The name of the school from which the subunit is being transferred.

(iii) Effective date of transfer.

(c) Authorities of educational institutions who indicate a desire to participate in the junior division ROTC program will be advised by the Army commander of the policy stated above. As an alternative these schools will be invited to apply for a National Defense Cadet Corps (NDCC) unit as prescribed in §§ 542.1 to 542.22 of this chapter.

2. In § 562.21, revise paragraph (b) (1) (ii), revise paragraph (c) (3) (i) (*d*), and add paragraph (c) (3) (i) (*e*) and (*f*), as follows:

§ 562.21 *Requirement for enrollment in specific cases.* * * *

(b) *Basic course senior division and MST-3 and -4 course military schools division*—(1) *Academic requirements.* A student enrolling in these courses must:

* * * * *

(ii) Be enrolled in the college freshman academic year to be enrolled in MS I, except:

(*a*) When compression of the course is authorized (§ 562.28).

(*b*) In case of an academic sophomore enrolled in a course which requires 5 years for the attainment of the first degree, when approved by the professor of military science and tactics and the institutional head.

* * * * *

(c) *Advanced course senior division and MST 5 and 6 course military schools division.* * * *

(3) *Student requirement.* A student enrolling in these courses must:

(i) * * *

(*d*) GST-1. Test Booklet—DA Form 6209; and Scoring Key Rights—DA Form 6209-1.

(*e*) GST-2. Test Booklet—DA Form 6210; and Scoring Rights—DA Form 6210-1.

(*f*) GST-1 and 2. Manual—DA Pamphlet 611-209; and Answer Sheet—DA Form 6006.

3. In § 562.24, revise paragraph (c) to read as follows:

§ 562.24 *Discharge or release from ROTC program.* * * *

(c) Requests for withdrawal, discharge from current contract, or reinstatement under prior contract will be approved or disapproved by the army commander whose decision will be based upon the merits of each individual case. Payment of commutation of subsistence will be stopped effective the date of discharge of the student from his ROTC contract. Refund of commutation of subsistence paid to the student while under contract will not be required.

4. Revise § 562.26 (c) (2) to read as follows:

§ 562.26 *Training of students ineligible for enrollment.* * * *

(c) Students receiving ROTC instruction in accordance with paragraph (a) or (b) of this section are subject to the following provisions:

* * * * *

(2) They will not be eligible to receive commutation of subsistence or uniform allowances or to be furnished Government issue uniforms while training at the institution. This does not prohibit the student from wearing a uniform furnished by the institution or purchased with his own funds. Title 10, United States Code, section 773, as amended, authorizes students permitted to pursue the course (not enrolled) to wear the ROTC uniform. This statutory authority does not include students denied enrollment in the basic course because of refusal to sign the loyalty oath, nor authorize foreign nationals to purchase the Army Green uniform. Army Green uniforms which are worn by foreign nationals pursuing ROTC under the provisions of this section must be the property of the institution. The institution may issue the uniform to the student for wear during his participation in the ROTC, but the uniform must be returned to the institution at such time as the student completes the course or withdraws therefrom.

[C 10, C 11, and C 13, AR 145-350] (Sec. 3012, 70A Stat. 157; 10 U. S. C. 3012. Interpret or apply secs. 4381-4387, 70A Stat. 246-248; 10 U. S. C. 4381-4387)

[SEAL] HERBERT M. JONES, *Major General, U. S. Army, The Adjutant General.*

[F. R. Doc. 58-9063; Filed, Oct. 31, 1958; 8:45 a. m.]

Chapter VII—Department of the Air Force

Subchapter J—Air Force Procurement Instructions

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments are issued to the Air Force Procurement Instructions:

PART 1001—GENERAL PROVISIONS

1. Section 1001.201-57 is deleted and the following substituted therefor:

§ 1001.201-57 *Foreign procurement activity.* The term "foreign procurement activity" means any Air Force installation engaged in procurement and located outside the United States, its Territories and possessions and the Commonwealth of Puerto Rico. The term includes air attachés and Air Force foreign missions.

2. Sections 1001.201-65, 1001.201-68 and 1001.201-69 are deleted and the following substituted therefor:

§ 1001.201-71 *Title I and Title II Architect-engineer services.* The terms "Title I" and "Title II" architect-engineer services are convenient terms informally used by the Air Force to designate general types of architectural and engineering work and services. These terms do not define specific scopes of work or services applicable to all types of projects. Furthermore, their meanings, when applied to a particular project, will vary depending upon the type of project involved and the specific services required for its accomplishment. These terms, therefore, should only be used in architect-engineer contracts when the applicable items of work and services required for a particular project are specified under these headings in the "Statement of Work." As used by the Air Force, these terms have the following general meanings.

(a) Title I Architect-engineer services means any services required to be furnished by an architect-engineer in connection with the preparation, coordination, and approval of preliminary and final designs, Drawings specifications, estimates of cost, and other technical documents and data essential to the development of advance and master plans, military construction projects (including family housing projects) and the maintenance, alteration and repair of constructed facilities. The following subparagraphs suggest types of services which are considered to fall within the general classification of "Title I Architect-engineer services."

(1) Furnishing all services required in connection with the development of advance and master plans.

(2) Making such topographical surveys (including the placing of permanent monuments tied into established datum), maps, technical surveys or fact-finding investigations and reports, as may be required. (Not to include real estate surveys.)

(3) Establishing requirements for subsurface explorations, soil loadings, pavement and other tests, supervising the making of such explorations and tests, and recording and evaluating the results obtained.

(4) Making visual field investigations of existing conditions to determine elements governing the proper and expeditious development of specific project.

(5) Preparing for approval and revising as necessary preliminary site plans, designs, sketches, layouts, drawings, outline specifications, estimates of cost and similar data, including the furnishing of such copies of the above material as may be specified.

(6) Adapting Government designs, drawings, technical provisions of specifications and standards for buildings and other structures necessary to meet the requirements of the approved layout for the project and preparing detailed designs, technical provisions of specifications and drawings in required form for buildings and other structures for which Government designs are incomplete or not available.

(7) Based upon approved preliminary material, preparing for approval and revising as necessary final site plans, designs, working drawings (including scale and full size details), and technical provisions of specifications according to specified standards for effective coordination and efficient erection of the construction work. Preparing and furnishing a specified number of sets of the final approved drawings and specifications.

(8) Obtaining necessary permits, licenses, and approvals from all local, State, and Federal authorities if required.

(9) Preparing final estimates of cost for the proposed project based upon approved designs, drawings, and technical provisions of the specification.

(10) Preparing schedules and charts showing the sequence of construction operation for each portion of the work.

(11) Preparing quantity estimates of critical and important materials and length of time after award of the construction contract when such materials will be required on the site.

(12) Assisting in preparing invitations for construction bids. Assisting in analyzing and evaluating construction bids or proposals received.

(13) Preparing construction contract change drawings and specifications to correct errors for which the architect-engineer was responsible.

(14) Furnishing such advice and counsel during the construction period as may be required. Visiting the site for a specified number of times. (These services should not be required if a contract is awarded for supervision of construction.)

(15) When a contract is not to be awarded for the supervision of construction, the services outlined in paragraph (b) (2) of this section may be considered to be "Title I" services.

(b) Title II Architect-engineer services means any services required to be furnished by an architect-engineer in connection with the general supervision and detailed field inspection of the construction of a project to ensure that all phases of the construction work are performed in strict compliance with the intent and requirements of the approved construction contract documents, and the furnishing of such other technical services during the construction period as may be required and specified. The following subparagraphs suggest types of services which are considered to fall within the general classification of "Title II Architect-engineer services":

(1) Furnishing general overall supervision of the construction, furnishing such advice and counsel during the construction period as may be required and providing direct supervision over the inspection engineer and his assistants.

(2) Reviewing, checking, coordinating, and recommending approval of shop drawings and material samples submitted by construction contractors to assure that they conform to the requirements and intent of the approved construction contract drawings and specifications.

(3) Furnishing the services of an inspection engineer, assistants, and other personnel to directly supervise and provide detailed field inspection of the construction to ensure that every part of the work is accomplished according to the requirements and intent of the approved construction contract drawings and specifications.

(4) Making field tests on the site of the work, maintaining complete records in connection therewith and reporting, in writing, as to the conformity or nonconformity of the material, equipment, and workmanship to technical provisions of the specifications. Evaluating reports on tests of materials and equipment made by others, as may be required.

(5) Preparing construction contract change drawings and specifications and analyzing and evaluating contractors' proposals for such changes.

(6) Preparing, with the assistance of the construction contractor, labor estimates showing the approximate numbers, trades, and dates required to meet the approved construction schedule.

(7) Preparing periodic progress reports in approved form showing progress of the construction work and any deviation from the approved construction schedule.

(8) Preparing, as required, the partial and final construction estimates for payments.

(9) Upon termination or completion of the construction contract:

(i) Preparing record drawings to show construction actually accomplished. These record drawings will be prepared by correcting drawings prepared for construction purposes or where construction drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings.

(ii) Assisting in the final inspection and in the preparation of the completion report for the project.

(iii) Supervising tests of operating units and installed equipment to ensure conformance with specifications and furnishing all engineering services necessary to secure such conformance.

(iv) Preparing instruction for the proper maintenance and operation of all utilities and operating equipment included in the construction contract.

3. Sections 1001.302 and 1001.302–4 are added as follows:

§ 1001.302 *Sources of supplies.*

§ 1001.302–4 *Firms performing contracts in labor surplus areas*—(a) *Definitions.* (1) The labor market areas are classified according to relative adequacy of labor supply. Major labor market areas are classified in the U. S. Department of Labor publication, "Area Labor Market Trends," in categories of A, B, C, D, E, and F. This publication also lists smaller areas not regularly classified. For the purpose of DMP No. 4, major areas classified in Categories D, E, and F, as well as the smaller areas listed in the current "Area Labor Market Trends," will be considered as "Areas of Substantial Labor Surplus" or "Areas of Substantial Unemployment."

(b) *Policy.* The Executive for Small Business (MCP–5), Directorate of Procurement and Production, Hq AMC, will monitor the placement of contracts in areas of substantial labor surplus by maintaining staff surveillance of the functions of purchasing activities to assure compliance with policies and procedures in respect thereto. AF purchasing offices located in the United States will accordingly comply with the following:

(1) The term "perform substantially in an area of substantial labor surplus" as used in the ASPR will be interpreted to mean that the prime contractor will perform at least 60 percent of the dollar value of the contract in "Area of Substantial Labor Surplus".

(2) For procedures to be followed in applying set-asides, see §§ 2.205, 3.105, 3.219 of this title, and §§ 1002.205, and 1003.105 of this chapter.

(3) When a procuring contracting officer is ready to issue or cause to be issued an IFB, RFP, or Letter Request for Proposal, but prior to taking such action, he will obtain a determination from the small business specialist regarding the applicability of DMP No. 4 to the procurement. If any firm located in an "Area of Substantial Labor Surplus" appears on the applicable Bidders' Mailing List or is added to the list by the procuring contracting officer or the small business specialist, DMP No. 4 is applicable. The AF small business specialist assigned to the purchasing activity will make determinations concerning the applicability of DMP No. 4 to a particular procurement.

(c) *Application.* The above policy applies to procurements of supplies estimated to cost in excess of $25,000.

(d) *Implementation.* (1) "Area Labor Market Trends" and "Directory of Important Labor Market Areas" and supplements thereto, which sets forth the boundaries of each labor market area and lists communities included in each area, are distributed by the Department of Labor to Hq AMC and to each AMA and AF depot (except Dayton AFD).

(2) Each contract for a "set-aside" quantity that is awarded due to preferential treatment under DMP No. 4 will contain the following clause:

It is understood that award of this contract was due to a set-aside under Defense Manpower Policy No. 4 whereby the contractor was given the opportunity of meeting the contract price for quantities not set-aside. The contractor warrants that it will perform at least 60 percent of the dollar value of this contract in an area of substantial labor surplus.

4. Sections 1001.306 and 1001.306–3 are added as follows:

§ 1001.306 *Transportation costs.*

§ 1001.306–3 *Quantity analysis.* When a contracting officer has knowledge of or is informed by a bidder in a negotiated procurement action that additional quantities of the item being purchased can be transported at no increase in transportation cost or that the purchase of carload or truckload quantities will result in lower unit transportation costs, he will inform the initiating activity of this fact and request advice as to whether such additional quantities or carload or truckload quantities will be purchased.

5. Section 1001.307–50 (a) is changed as follows:

§ 1001.307–50 *Policy regarding the consideration of loyalty of scientific researchers on unclassified research contracts.* (a) The problems of security and possible unauthorized release of classified information do not arise under unclassified scientific research contracts. The major consideration regarding the individuals involved should be their scientific integrity and ability. The only consideration relating to the loyalty of individual scientists engaged in work under Government contracts is the principle that it would appear to be against the national interest to give aid and comfort to a person disloyal to the United States. In conformance with this principle, the following policy has been adopted:

(1) The policy of the Air Force in considering proposals for contracts in support of unclassified research not involving security considerations is to assure that, in appraising the merit of a proposal submitted by or on behalf of a scientist, his experience, competence and integrity are always taken carefully into account. Purchasing activities will not knowingly award or continue a contract in support of research for one who is:

(i) An acknowledged Communist or anyone established as being a Communist by a judicial proceeding, or anyone who advocates change in the United States Government by other than constitutional means.

(ii) An individual who has been convicted of sabotage, espionage, sedition, subversive activity under the Smith Act, or a similar crime involving the Nation's security.

6. Section 1001.453 (f) is changed as follows:

(f) Procurement authorities vested in commanders, major air commands are likewise vested in the Commander, Military Air Transport Service. Procurement authorities vested in commanders, oversea commands are likewise vested in the Commander, Military Air Transport Service, and the Commander-in-Chief, Strategic Air Command, with respect to areas outside the continental United States and not within the jurisdiction of a major air command.

7. Section 1001.457 (a) (7) and (8) are deleted and the following substituted therefor:

(7) Commander, ARDC, with respect to research and development contracting matters including authority to: (i) waive bid, payment, performance, or other bonds (other than for construction), (ii) administer patent matters incident to R&D contracts, and (iii) approve insurance programs and pensions and retirement plans of AF contractors. The authority may be redelegated. A copy of all redelegations by the Commander, ARDC, of any of his research and development procurement authorities will be furnished to the Commander, AMC, attn: MCPPA. Limitations of the authority are shown below.

(8) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC. Normally the authority will be exercised with respect to manually approving contracts, involving $1,000,000 or less, that are subject to manual approval of a duly authorized official of the Directorate of Procurement and Production, Hq AMC, because of limitations on delegated authority. Such contracts involving more than $1,000,000 are normally approved by the Director of Procurement and Production, Hq AMC, but in his absence may be approved by the next ranking official present, in the following order: (i) Deputy Director of Procurement and Production, (ii) Deputy Director/Procurement, and (iii) Assistant Deputy Director/Procurement, or by an individual officially designated as "Acting" in one of the above capacities. For the purposes of the dollar limitations in this subparagraph, acquisition cost of any industrial facilities to be furnished under a facilities contract will be added to the amount of funds being obligated on that contract.

8. Section 1001.457 (a) (14) and (15) are deleted and the following substituted therefor:

(14) Commanders and deputy commanders, air materiel forces, for amounts of $350,000 or less, with power of redelegation to not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the air materiel force. Contracting officers, under the jurisdiction of the air materiel force, may be authorized to make awards and execute contracts involving $100,000 or less. Administrative contracting officers under the jurisdiction of the Air Materiel Force may be authorized to exercise the authority described in this paragraph.

9. Section 1001.459 (b) is changed by amending (3), (4), (5), and (6) and adding (7) as follows:

(3) Deputy Director/Ballistic Missiles, Hq AMC, for (i) contracts involving

$500,000 or less that are authorized by an individual findings and determination, and (ii) contracts involving $100,000 or less that are authorized by a blanket findings and determination.

(4) Commander, Air Materiel Force, Pacific Area, for contracts involving $5,000 or less.

(5) Commander, Air Materiel Force, European Area, for contracts involving $5,000 or less.

(6) Commanders of air materiel areas (includes commanders of overseas AMA's under the jurisdiction of AMFPA and AMFEA) and AF depots for contracts involving $5,000 or less.

(7) Commander, Wright-Patterson Air Force Base, for contracts involving $5,000 or less.

10. Section 1001.460 (a) is changed to read as follows:

(a) The Commander, AMC, has been delegated authority with respect to the Ballistic Missiles Program (ICBM/IRBM) and Project Vanguard as described below. The authority is to be exercised within the limits of such allocation determinations or other quantitative restrictions as may be established from time to time by proper authority. (See § 1.308 of this title.) Each person who redelegates the authority will maintain a record of such redelegations and limits placed thereon.

11. Section 1001.480 is added as follows:

§ 1001.480 *Guide—delegations of Air Force procurement authority.* Authority for procurement actions within the Air Force stems from Federal Statutes, Presidential Executive Orders, and policy decisions by the Departments of Defense and Air Force. Authorities are initially vested in the Secretary of the Air Force who has, in turn, redelegated authority through his Assistant Secretaries, Chief of Staff, Vice Chief of Staff, and Deputy Chief of Staff, Materiel, Hq USAF, to the Commander, Air Materiel Command. The Commander, AMC, has been delegated general procurement authorities and is designated sole "Head of a Procuring Activity" for the Air Force. The Commander, AMC, in turn, has redelegated all redelegable authorities to the Director of Procurement and Production, Hq AMC. Above delegating officials retain the right to exercise any of the authorities delegated or to issue instructions concerning the exercise of such authority.

(a) Redelegation of specific procurement authorities by the Commander, AMC, or the Director of Procurement and Production, Hq AMC, or higher authority, are reflected in charts, § 1001.480–2. These charts contain only authorities which are granted by written instruments of delegation issued by Director of Procurement and Production, Hq AMC, or higher authority. The charts are to be used only as a reference guide of Air Force delegations of authority reflected in ASPR and AFPI and in no way affect authorities vested in delegates or the limitations and conditions imposed on the exercise of authorities.

12. Section 1001.480–2 is added as follows:

§ 1001.480–2 *Redelegation of AF procurement authorities by the Commander, AMC, and the Director of Procurement and Production, Hq AMC.*

A Subject and reference	B Hq AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—overseas air attaches and foreign missions
1. Designate contracting officers and representatives thereof (includes authority to terminate appointments). Reference: § 1001.454.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited. DD/P and ADD/P, as stated in § 1001.454 (c) (7). Power to redelegate: None. DD/BM, as stated in § 1001.454 (c) (9). Power to redelegate: ADD/BM. Chief, EDSD, as stated in § 1001.454 (c) (11). Power to redelegate: Deputy Chief, EDSD.	Comdr and D Comdr, AMA's as stated in § 1001.451 (c) (4). Power to redelegate: None. Comdr and D Comdr, AF Depots. Power to redelegate: None.	Comdr and D Comdr, AMF as stated in § 1001.454 (c) (12) and (13). Power to redelegate: Comdrs of 1st echelons of command immediately subordinate to the AMF. Comdr, AMC separate activities under direct jurisdiction of Comdr, AMC. Power to redelegate: None.	Comdr: Power to redelegate: 1st echelon staff officers, except no limitation on Comdr, ARDC, for R&D matters. Director, AF Academy Construction Agency, as stated in § 1001.454 (c) (10). Power to redelegate: None.	Comdr, Oversea Commands. Power to redelegate: 1st echelon staff officers. Air Attaches and Chiefs of AF foreign missions. Power to redelegate: None.
2. Issue letter contracts. Reference: § 1003.405–3 of this chapter and § 3.405–3 of this title.	DoPP and D DoPP, DD/P and ADD/P. Power to redelegate: Unlimited. DD/BM, no dollar limitation. Power to redelegate: ADD/BM. Chief, EDSD, anticipate costs not exceed $350,000. Power to redelegate: Deputy Chief, EDSD. Chiefs of Divisions, anticipate costs not exceed $350,000. Power to redelegate: None. Chief, Industrial Resources Division, no dollar limitation for facilities involving critical and preconstruction planning and design for ICBM and IRBM programs. Power to redelegate: Chief and Deputy Chief, Preparedness Branch.	Comdr, anticipate costs not exceed $350,000. Power to redelegate: DoPP.	Comdr, AMF, no dollar limitation. Power to redelegate: 1st echelon staff officer.	Comdr, ARDC, with respect to R&D procurements, no dollar limitation. Power to redelegate: Unlimited. Comdr, Air Training Command, subject to prior authorization by MCPC, Hq AMC. Power to redelegate: 1st echelon staff officer.	Comdr, oversea commands no dollar limitation. Power to redelegate: 1st echelon staff officer. Air Attaches and Chiefs of AF foreign missions, no dollar limitation. Power to redelegate: None.

A Subject and reference	B HQ AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—overseas air attaches and foreign missions
3. Enter into, execute, and approve contracts. Reference: § 1001.457. NOTE: Unless otherwise indicated, the authority vested in contracting officers is limited to making awards and executing contracts.	Comdr, AMC, no dollar limitation. Power to redelegate: Unlimited. DoPP and DDoPP, no dollar limitation. Power to redelegate: Unlimited. DD/P and ADD/P, normally manual approval $1,000,000 or less (see § 1001.457 (a) (8). Power to redelegate: None. DD/BM, $350,000 or less. Power to redelegate: ADD/BM and contracting officers for amounts of $350,000 or less. Chief, EDSD, $350,000 or less. Power to redelegate: Deputy Chief, EDSD. Contracting officers, EDSD, $30,000 or less, subject to such limitations as may be imposed by the Chief, EDSD. Power to redelegate: None. Chiefs and Deputy Chiefs Buying Divisions, within Directorate of Procurement and Production, Hq AMC, manual approval of SA for engineering changes. Power to redelegate: None. Procuring Contracting Officers within Directorate of Procurement and Production, Hq AMC, $350,000 or less. Power to redelegate: None.	Comdr, $350,000 or less. Power to redelegate: DoPP, $350,000 or less. Directors of USAF Logistic Control Terminals, $100,000 or less. Contracting officers, $30,000 or less (see § 1001.457 (a) (4) (i) for exception). Power to redelegate: None. Administrative Contracting Officers (see § 1001.457 (a) (iii) for specific authorities). Power to redelegate: None.	Comdrs and D Comdrs AMF's, $350,000 or less. Power to redelegate: 1st echelon staff officers. Contracting officers, AMF's, $100,000 or less, subject to such further limitations as may be imposed by the Comdr. Power to redelegate: None. Comdr, AMC separate install. under the direct jurisdiction of the Comdr, AMC,—$100,000 or less. Power to redelegate: None. Contracting officers, AMC separate install. under the direct jurisdiction of the Comdr, AMC,—$30,000 or less. Power to redelegate: None.	Comdr, $100,000 or less. Power to redelegate: 1st echelon staff officer (approval). Contracting officers—$100,000 or less, subject to such further limitations as may be imposed by the Comdr, w/o power to redelegate. Comdr, ARDC, for R&D matters (excludes local purchase), no dollar limitation subject to: (a) Research contracts in excess of $250,000 require review by Hq AMC (MCPC) and manual approval by an ARDC approving official. (b) Other than research contracts in excess of $250,000 require review by Hq AMC (MCPC) and manual approval by an AMC approving official. (c) WADC, only for procurement of research and of armament development using 650 series funds. Power to redelegate: Unlimited. Director, AF Academy Construction Agency, $350,000 or less. Power to redelegate: None. Contracting officers, AF Academy Construction Agency, $30,000 or less, subject to such limitations as may be imposed by the Director, AFACA. Power to redelegate: None.	Comdrs, overseas commands, no dollar limitation. Power to redelegate: 1st echelon staff officer (approval). Contracting officers for amounts of $100,000 or less. Air Attachés and Chiefs of AF foreign missions no dollar limitation. Power to redelegate: Contracting officers for amounts of $100,000 or less.
4. Make determinations and findings in support of incentive-type, cost-type, and CPFF type contracts. Reference: § 1003.303.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited except to contracting officers for procurement involved. As stated in AFPI 3-303(c) and (d): DD/P and ADD/P, Chief and Deputy Chiefs of Buying Divisions, including Industrial Resources Div for facilities contracts; Chiefs and D Chiefs, within buying divisions for R&D contracts; Chief and D Chief, Preparedness Branch for facility contracts. Power to redelegate: None. DD/BM. Power to redelegate: Not below the Chief, Procurement Staff Division. Chief, EDSD. Power to redelegate: Deputy Chief, EDSD.	Comdr. Power to redelegate: Not below DoPP.	Comdr and D Comdr, AMF as stated in AFPI 3-303 (g). Power to redelegate: 1st echelon staff officer.	Comdr, ARDC, for R&D (except local purchase). Power to redelegate: unlimited. Comdr, Air Training Command as stated in § 1001.464. Power to redelegate: Staff officer responsible for procurement within Hq ATC. Director, AF Academy Construction Agency as stated in AFPI 3-303 (e). Power to redelegate: None.	
5. Manual approval of architect-engineer contracts. Reference: § 1001.459.	Comdr AMC $1,000,000 or less if secretarial F&D has been made. Power to redelegate: DoPP. DoPP—$1,000,000 or less if secretarial F&D has been made: Power to redelegate: Comdr of AF Commands and Comdr of AMC Bases subject to § 1001.459. DD/BM—$500,000 or less if individual secretarial F&D; $100,000 or less if blanket secretarial F&D. Power to redelegate: None.	Comdr—$5,000 or less subject to § 1001.459. Power to redelegate: None.	Subject to limitations in § 1001.459 and w/o power to redelegate: Comdr, AMF—$5,000 or less. Comdr, oversea AMA's—$5,000 or less. Comdr, Wright-Patterson AF Base—$5,000 or less.	Comdr—$500,000 or less if individual secretarial F&D; $100,000 or less if blanket secretarial F&D. Power to redelegate: V Comdr and command staff officer responsible for procurement. Comdr, V Comdr and command staff officer responsible for procurement to any AF Base under their jurisdiction—$5,000 or less subject to § 1001.459.	Comdr, oversea commands—$1,000,000 or less if secretarial F&D has been made. Power to redelegate: V Comdr and command staff officer responsible for procurement. Comdr, V Comdr and command staff officer responsible for procurement to any AF Base under their jurisdiction—$5,000 or less subject to § 1001.459.
6. Manual approval of contracts for services of experts and consultants. Reference: § 1001.458.	Comdr, AMC—subject to prior approval in form of Secretarial F&D. Power to redelegate: Unlimited. DoPP and DDoPP; DD/P and ADD/P; subject to § 1001.458. Power to redelegate: None.	----------	----------	Comdr, ARDC, subject to § 1001.458. Power to redelegate: Staff officer responsible for procurement within Hq ARDC; 1st echelon staff officers.	

A Subject and reference	B HQ AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—overseas air attaches and foreign missions
7. Manual approval of contracts for personal service for air photographic and charting service. Reference: § 1001.467.	Comdr, AMC—subject to blanket secretarial F&D. Power to redelegate: Unlimited. DoPP and DDoPP; DD/P and ADD/P; Chief and D Chief, Airlines, Maintenance & Service Contracts Div. Power to redelegate: None.	Comdr and D Comdr, MAAMA, OCAMA, SBAMA. Power to redelegate: None. Chief, New York, Chicago, and Los Angeles, APD. Power to redelegate: None.			
8. Contracts for public utility services (power, gas and water) extending beyond current fiscal year. Reference: § 1001.461.	Comdr, AMC, no dollar limitation, but subject to § 1001.461(a). Power to redelegate: Unlimited. DoPP and DDoPP, no dollar limitation. Power to redelegate: Unlimited. DD/P and ADD/P, no dollar limitation. Power to redelegate: Unlimited.				
9. Make determinations under the "Buy American Act" based on nonavailability of supplies or materials. Reference: § 1006.103-5.	Comdr, AMC; DoPP; DD/P and ADD/P; DD/BM and ADD/BM; Chiefs of divisions, Directorate of Proc. and Prod. Power to redelegate: None may redelegate.	DoPP. Power to redelegate: None.	----------	Director and Deputy Director of Procurement, Hq ARDC. Power to redelegate: None.	
10. Authorize publication of advertisements in newspapers with respect to soliciting bids. Reference: § 1002.202-4.	Comdr, AMC; DoPP; DD/P and ADD/P; Chief of a Division, Directorate of Procurement and Production. Power to redelgate: None may redelegate.	DoPP. Power to redelegate: None.	DoPP, AMA's. Power to redelegate: None. Comdr, AMC Separate Installations. Power to redelegate: None.	Comdr and V Comdr. Power to redelegate: None.	Comdr and V comdr of oversea commands. Power to redelegate: None.
11. Make determinations—Mistakes in bid prior to award pursuant to ASPR 2-105.2. Reference: § 1002.405-2.	DoPP. Power to redelegate: DD/P and in his absence ADD/P. DD/P and in his absence ADD/P. Power to redelegate: None.				
12. DO rating and allotment of controlled materials. Reference: § 1001.463.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited. Ch, Ind Resources Div as stated in § 1001.463 (a) (1) with power to redelegate. Division Chiefs as stated in § 1001.463 (a) (4). Contracting Officers as stated in § 1001.463 (a) (2), (3), (4). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.463 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.463 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.463 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.463 (a) (2), (3). Power to redelegate: None.
13. Priorities authority Ballistic Missiles Program. Reference: § 1001.460.	Comdr, AMC & DoPP. Power to redelegate: Unlimited. Ch, Industrial Resources Div, AMC, as stated in § 1001.460 (a) (1) with power to redelegate. DD/BM & AMC Div Ch, P&P as stated in § 1001.460 (a) (4). Contracting Officers as stated in § 1001.460 (a) (2), (3), (4). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.460 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.460 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.460 (a) (2), (3). Power to redelegate: None.	Through successive echelons of command to Contracting Officers as stated in § 1001.460 (a) (2), (3). Power to redelegate: None.
14. Approve and deny requests for (i) Correction of mutual mistakes (ii) formalization of informal commitments; and deny requests for (i) amendments of contracts without consideration (ii) correction of mistakes other than mutual (First War Powers Act). Reference: § 1056.015-1, § 1056.004.	Comdr, AMC. Approve $50,000 or less—Deny no dollar limitation. Power to redelegate: DoPP with power of redelegation; DDoPP & DD/P without power of redelegation. DoPP, Approve $50,000 or less—Deny no dollar limitation. Power to redelegate: Oversea Commands, AMFEA and AMFPA. DDoPP and DD/P, Approve $50,000 or less—Deny no dollar limitation. Power to redelegate: None.	----------	Comdr and D Comdr AMF. Approve $50,000 or less—Deny no dollar limitation. Power to redelegate: DoPP and DDoPP.	----------	Comdr and V Comdr of Major Oversea Commands—Approve $50,000 or less—Deny no dollar limitation. Power to redelegate: None.
15. Approve revision of contract delivery schedules, notwithstanding absence of legal consideration (First War Powers Act). Reference: § 1056.015.2 § 1056.004 (c).	Comdr, AMC. Power to redelegate: Director and a deputy director of procurement and production. DoPP and DD/P. Power to redelegate: None.				

A Subject and reference	B HQ AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—oversea air attaches and foreign missions
16. Make or approve contracts for sale of Government property without regard to existing laws or regulations governing sale or disposal (First War Powers Act). Reference: AFPI 8-608.50.	Comdr, AMC. Power to redelegate: Director and a deputy director of procurement and production. DoPP and DD/P. Power to redelegate: None.				
17. Control Government-owned industrial property. a. Correct and adjust deficiencies. b. Grant exceptions to policy that contractors' records will be designated as official records. c. Appoint property administrators. Reference: § 1013.103.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited. DD/P and ADD/P. Power to redelegate: None. DD/BM. Power to redelegate: ADD/BM. Chief, EDSD. Power to redelegate: Deputy Chief, EDSD.	Comdr, D. Comdr. Power to redelegate: 17b only and only as prescribed in AFPI 13-103 (b) (7).	Comdr and D. Comdr AMF. Power to redelegate: Not below a 1st echelon staff officer. Comdr, D. Comdr, AMC separate local purchase activities. Power to redelegate: 17b only and only as prescribed in § 1013.103 (b) (7).	Comdr, V. Comdr. Power to redelegate: Staff officers responsible for procurement within command headquarters and 1st echelon staff officer. Director, AF Academy Construction Agency. Power to redelegate: None.	Comdr, V. Comdr. Power to redelegate: Staff officers responsible for procurement within command headquarters and 1st echelon staff officer. Air Attachés and Chiefs of AF foreign missions. Power to redelegate: None.
18. Enter into and execute leases of machine tools and other production equipment. Reference: § 1013.3002.	Comdr, AMC. Power to redelegate: Hq AMC—Not below a Chief or D. Chief Division of DoPP AMA—Not below DoPP. DoPP. Power to redelegate: Chief or D. Chief Division, Hq AMC AMA—Not below DoPP. Chief and D. Chief, Industrial Resources Division. Power to redelegate: None.	Comdr and D. Comdr, AMA's. Power to redelegate: Not below DoPP.			
19. Approve expansion of industrial facilities (subject to qualification by AFPI 13-2401 (c) for certain facilities). Reference: § 1013.2401.	Comdr, AMC—$500,000 or less. Power to redelegate: DoPP. DoPP—$500,000 or less. Power to redelegate: None.				
20. Determine necessity for and approve leasing nonseverable industrial facilities on land not owned or controlled by the Government under circumstances of § 13.406-1 (a) and (b) of this title. Reference: § 1013.406.	Comdr, AMC and DoPP. Power to redelegate: Unlimited. DDoPP. Power to redelegate: None. DD/BM for ICBM and IRBM No. 1 Programs. Power to redelegate: None.				
21. Exercise authority of the Secretary of the AF with respect to leasing nonseverable industrial facilities on land not owned or controlled by the Government pursuant to § 13.406-1 (c) of this title, ICBM and IRBM No. 1 Programs only. References: § 1013.406.	Comdr, AMC. Power to redelegate: DoPP and DD/BM. DoPP. Power to redelegate: None. DD/BM. Power to redelegate: None.				
22. Terminate and settle contracts. a. Terminate contracts for convenience of the Government. b. Settle terminating claims and enter into settlement agreements. Reference: §§ 1008.302-5 through 1008.302-56 and 1008.512.	Comdr, AMC and DoPP. Power to redelegate: Unlimited.	Comdr, AMA's. Power to redelegate: Contracting officers. Comdr of AF Depots—as to settlements, $1,000 or less, except for construction contracts. Power to redelegate: Contracting officers.	Comdr and D. Comdr, AMF. Power to redelegate: Commanders of 1st echelon commands immediately subordinate to the AMF with power of redelegation to contracting officers.	Comdr, $1,000 or less (as to settlements). Power to redelegate: Contracting officers. Comdr, ARDC, for contracts issued by RADC & AFCRC only (as to settlements). Power to redelegate: Contracting officers.	Comdr of oversea commands. Power to redelegate: Contracting officers. Air Attachés and Chiefs of AF foreign missions. Power to redelegate: Contracting officers.
23. Cancellation for default. Reference: § 1008.2003.	Contracting officer specifically designated to perform that function by the Chief, Readjustment Staff Division.	----------	Contracting officers specifically designated to perform that function by the Comdr, AMF.	----------	Contracting officers specifically designated to perform that function by the Comdr, AMC, Comdr of oversea comds (Except FEAF), and Air Attachés & Chiefs of AF foreign missions.
24. Authorize contractors to conclude subcontractor termination settlements between $1,000 and $10,000. Reference: § 1008.518-6 of this chapter and § 8.518-6 of this title.	Comdr, AMC. Power to redelegate: deputy or principal assistant for contract matters. DD/P. Power to redelegate: None.				
25. Establish settlement review boards. Reference: § 1008.517 (c).	Comdr, AMC and DoPP. Power to redelegate: Unlimited. DDoPP; DD/P and ADD/P; Chief and Deputy Chief, Readjustment Staff Div. Power to redelegate: None.	----------	Comdr, and D. Comdr, AMF. Power to redelegate: None.	----------	Comdr and V. Comdr, Oversea Commands. Power to redelegate: None.

A Subject and reference	B HQ AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—overseas air attaches and foreign missions
26. Establish property disposal review boards. Reference: § 1008.613-1.	Comdr, AMC and DoPP. Power to redelegate: Unlimited. DDoPP; DD/P and ADD/P; Chief and Deputy Chief, Readjustment Staff Div.; Power to redelegate: None.	----------	Comdr, and D. Comdr, AMF. Power to redelegate: None.	Comdr, and V. Comdr, ARDC. Power to redelegate: DoP—Boards within European Office, ARDC.	Comdr and V. Comdr, Overseas Commands. Power to redelegate: None.
27. Make determination to require payment and performance bonds in connection with cost-type construction and facilities contracts. Reference: § 1010.103-2 (c).	Comdr, AMC. Power to redelegate: Not below the level of a chief or deputy chief of a Division of the Directorate of Procurement and Production. DoPP. Power to redelegate: Not below the level of a chief or deputy chief of a Division of the Directorate of Procurement and Production. DDoPP; DD/P and ADD/P; Chief and Deputy Chief, Industrial Resources Division. Power to redelegate. None.				
28. Approval and acceptance of insurance, pension and retirement plans. Reference: §§ 1010.301 (a) and 1010.2002.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited. DDoPP; DD/P and ADD/P; Chief, Pricing Staff Division Contracting Officers, Bonds and Insurance Staff Branch. Power to redelegate: None.				
29. Approve and accept contract bonds, including legal sufficiency; require additional bond security; accept substitute security (not including release of original security). Reference: §§ 1010.108 (c) and 1010.2002.	Comdr, AMC. Power to redelegate: Unlimited. DoPP. Power to redelegate: Unlimited. Staff Judge Advocate. Power to redelegate: Unlimited.				
30. Approve requests for "unusual" progress payments as described in AFPI 54-604.1 (a) (1). Reference: § 1058.304 (b).	Comdr, AMC. Power to redelegate: General officers. DoPP. Power to redelegate; General Officers. DD/P. Power to redelegate: None.	----------	----------	Comdr, and V. Comdr, ARDC. Power to redelegate: None.	
31. Act as certifying officer with respect to executing certificates of eligibility—defense contract financing (guaranteed loans). Reference: § 1058.203-1.	Comdr, AMC. Power to redelegate: Not below the level of DD/P and ADD/P. DoPP and DDoPP; DD/Prod & ADD/Prod. Power to redelegate: None.				
32. Execute duty-free entry certificates for emergency purchase of war material abroad. Reference: § 1006.302-5	Comdr, AMC. Power to redelegate: Unlimited. Director of Transportation and services. Power to redelegate: Unlimited and including field transportation officers and administrative contracting officers.				
33. Release of program data and procurement information. Reference: § 1001.465	Comdr, AMC (except for data affecting use of tech reps and contract technicians within other major commands). Power to redelegate: Unlimited. DoPP. Power to redelegate: Chief, Programs and Analysis Office. Director and D Director Maintenance Engineering (limited to data affecting use of field engrs and tech reps within AMC). Power to redelegate: Unlimited.	Comdr limited to cases where AMA or Depot has been assigned prime class proc responsibility. Excludes release of data affecting use of field engrs and tech reps.). Power to redelegate: DoPP.			
34. Participation by airlines representatives in flights of commercially adaptable USAF aircraft. Reference: § 1001.466.	Comdr, AMC. Power to redelegate: DoPP and DDoPP. DoPP and DDoPP. Power to redelegate: None.				
35. Appoint AF emergency facilities depreciation board. Reference § 1003.903.	Comdr, AMC. Power to redelegate: DoPP and DD/P. DoPP and DD/P. Power to redelegate: None.				

A Subject and reference	B HQ AMC	C AMA's and AF depots CONUS	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—overseas air attaches and foreign missions
35. Sign applications for permits to procure tax-free or specially denatured alcohol. Reference: § 1011.205 (b) (1).	Comdr, AMC, DD/P and ADD/P. Power to redelegate: None.	DoPP, Topeka AF Depot. Power to redelegate: None.			
37. Process contract appeals direct to ASBCA. Reference: § 1054.507.	Comdr, AMC. Power to redelegate: Unlimited. Staff Judge Advocate. Power to redelegate: Unlimited.				
38. Approve PR's and MIPR's.	DoPP & DDoPP, no dollar limitation. Power to redelegate: Unlimited. Chief or D Chief of Division, no dollar limitation. Branch chiefs, $350,000 or less. Section chiefs, $100,000 or less. Contracting officers, $10,000 or less. Power to redelegate: None may redelegate.	Comdr, no dollar limitation. Power to redelegate: DoPP $1,000,000 or less. Contracting officers, $100,000 or less.	Comdr and D Comdr, AMF, no dollar limitation. Power to redelegate: Unlimited.		

LEGEND

Comdr..... Commander.
V Comdr..... Vice Commander.
D Comdr..... Deputy Commander.
DoPP..... Director of Procurement and Production.
DDoPP..... Deputy Director of Procurement and Production.
DD/P..... Deputy Director/Procurement.
ADD/P..... Assistant Deputy Director/Procurement.
DD/Prod..... Deputy Director/Production.
ADD/Prod..... Assistant Deputy Director/Production.
DD/BM..... Deputy Director/Ballistic Missiles.
1st echelon staff officer... means the staff officer responsible for procurement within the hq of the first echelon of command immediately subordinate to the activity concerned.

13. Section 1001.601–1 (a) is changed as follows:

(a) An official publication entitled "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" will be published, maintained and distributed for the information and guidance of Air Force Contracting Officers and other concerned procurement personnel. No firms or individual will be listed on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors for causes or under conditions other than those set forth in § 1.602 of this title.

14. Section 1001.601–50 is added as follows:

§ 1001.601–50 *Inquiries and correspondence from or concerning firms or individuals on the list.* All inquiries and correspondence from or concerning firms or individuals appearing on the list of debarred, ineligible, and suspended contractors will be referred through command channels to MCPI, Hq AMC, for appropriate action. Such inquiries will be referred to DCS/M, Hq USAF, if a review and advice as to appropriate action are deemed necessary.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1002—PROCUREMENT BY FORMAL ADVERTISING

1. Section 1002.202 is deleted and the following substituted therefor:

§ 1002.202–1 *Methods of soliciting bids.* In the case of construction contracts, copies of the IFB's including plans and specifications, if available, may be furnished upon request to nonbidders having a direct interest in the bidding, such as subcontractors, material men and suppliers of equipment for installation or use by the prime contractor on the project. Copies may also be furnished to any established trade publication or association requesting them, provided that the activities of the publications or associations are not restricted to publishing bid information for which a charge is made.

2. Section 1002.202–50 (a) (4) is changed as follows:

(4) Copies of unclassified IFB's for construction projects may be furnished to trade journals for the construction field.

3. Section 1002.204–1 (a), (1), (d), (e), and (f) are changed and (g) is added as follows:

(a) *Basic policies*—(1) *Advertised procurement.* It is mandatory that a complete list be obtained by the contracting officer. The selection of sources from the list will be at the discretion of the contracting officer, but will be in consonance with § 1302–4 (b) (3) of this title. It is not necessary to obtain a list when the item or items to be procured are qualified products and the procurement must be made too soon to permit interested suppliers to qualify their product prior to the bid opening date. (See Subpart E, Part 2 of this title, and Subpart E of this part). In procurements where this exception applies, the Qualified Products List (QPL) will be used as the bidder's mailing list. In addition the activity responsible for testing the product, i. e., the cognizant military laboratory, will be contacted to determine if any other firms are in process of qualifying their product and qualification appears imminent prior to the time of bid opening. Such firms will also be solicited.

NOTE: The identity of the activity responsible for testing and approving the QPL item is usually set forth in the applicable military specifications.

* * * * *

(d) *Qualified products list.* The bidders' mailing list will include all names of suppliers who have been placed on a Qualified Products List for the items concerned, as furnished by the Directorate of Engineering Standards, WADC, according to Subpart E, Part 2 of this title. See §2.504–7 of this title for the effect when suppliers' names appear on the list of debarred or ineligible bidders.

(e) *Identification of surplus dealers.* Whenever the name of a surplus dealer is placed on a bidders' mailing list, the words "Surplus Dealer" will be placed directly beneath the name of the firm. See Subpart O, Part 1053 of this chapter for additional material concerning surplus dealers.

(f) *Synopses.* In addition to the operation of bidders mailing lists, the facilities of the Department of Commerce for the dissemination of synopses of proposed procurements will be used according to AF procedures to make more widely available to all business enterprises (and particularly small business concerns and concerns in labor-surplus areas) public notice of procurement information sufficiently in advance of bid closing date to insure the broadest participation of qualified suppliers.

(g) *Limits on use.* In connection with the use of the bidders' mailing list, it is manifestly in the Government's best interest to consider carefully the administrative costs of each purchase in relation to the dollar value of the articles or services being procured to achieve maximum economy in procurement. On all items having local supply characteristics (such as sand and gravel), bids might accordingly be solicited only in the geographic area where performance can be expected. Thus, use of the bidders' mailing list should be on a basis that will promote the development of the maximum competition commensurate with the dollar value of the purchase to be made; and the degree of use of the en-

tire mailing list in any one will be as broad as is compatible with efficiency and economy in securing adequate competition, as required by law. (See § 1002.204–5 and Part 1050 of this chapter.)

4. Sections 1002.205, 1002.205–1, 1002.205–2 and 1002.205–3 are added as follows:

§ 1002.205 *"Set-asides" for firms in labor surplus areas.*

§ 1002.205–1 *General.* When "set-asides" are used in compliance with § 1.302–4 of this title and § 1001.302–4 of this chapter, the procedures set forth in this section will be applicable.

§ 1002.205–2 *Determination of the quantity of "set-asides."* The procuring contracting officer will be responsible for determining whether the application of a set-aside is appropriate and, if appropriate, determining the optimum quantity in connection with set-asides.

§ 1002.205–3 *Special conditions to be inserted in invitations for bids.* Whenever it has been determined to set aside a quantity of a procurement according to § 1.302–4 of this title and § 1001.302–4 of this chapter, the following provision will be included in the IFB or RFP covering procurement of the items not set aside. Pursuant to Defense Manpower Policy No. 4, an additional quantity of the items covered by this IFB (or RFP) has been "set-aside" for subsequent negotiation exclusively with firms who: (a) are located in areas classified by the Department of Labor as areas of substantial labor surplus; or are located in areas not so classified by the Department of Labor but submit with their bids (or proposals) a certification from the Local State Employment Office that the firm is located in an area of substantial labor surplus; (b) will perform not less than 60 percent of the dollar value of any resulting contract in an area of substantial labor surplus; and (c) have submitted a bid (or proposal) upon the items covered by this IFB (or RFP) at a unit price within 120 percent of the highest award made with respect to the items covered by this IFB (or RFP).

5. Section 1002.302 is deleted and the following substituted therefor:

§ 1002.302 *Time of submission*—(a) *Records.* The contracting officer whose duty it is to open bids will prepare a record of each late bid received by mail according to the following format. This format will be prepared by typewriter as required; it will not be established nor reproduced as a blank form for subsequent fill-in.

RECORD OF LATE BIDS

Contract No.------
IFB No.----------

Name of bidder: ----------
Address: ----------
Date and hour of mailing: ----------
Date and hour of receipt: ----------
Determination: ----------
Disposition: ----------
Certified by ----------
(Opening Contracting Officer)
Date ----------

The foregoing record will be made a part of the contract file resulting from the IFB. The envelope of any late bid which results in an award will be attached to this record and also made a part of the contract file. Acceptable late bids will be opened and entered on the abstract and so identified as late bids.

(b) *Hand-carried late bids.* It is the responsibility of bidders to see that their bids reach the designated office before the time fixed for the opening of bids. The purpose of this requirement is to give all bidders an equal opportunity, to prevent fraud, and to preserve the integrity of the competitive bid system. Consequently, bids hand carried by the bidder or his representative to the public opening and submitted after the contracting officer has declared that the time of opening has arrived will not be accepted by the contracting officer. This rule will be followed without regard to the length of time involved; for example, if the bid opening is scheduled for 11 a. m. and at the time the contracting officer has declared that the time of opening has arrived, any bid personally submitted thereafter by a bidder or his representative will not be accepted even though it may be only one or two minutes late. Late arrival of a hand-carried bid, not due to any fault or negligence of the bidder, does not come within the terms of the Invitation for Bids excusing "late arrival due solely to delay in mails for which bidder was not responsible."

6. Section 1002.405–2 (c) is deleted; § 1002.405–2 (b) (3) and (e) are deleted and the following substituted.

(3) ASPR Committee Minutes, November 13, 1957, as implemented by Headquarters USAF letter, November 25, 1957, authorize the following change to § 2.405–2 (b) (3) of this title pending publication of an ASPR revision: "Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Materiel Command."

(e) The data required by § 2.405–2 (e) of this title will be submitted in the most expeditious manner to the Commander, AMC, Attn: MCJCR, marked "Immediate attention—Mistake in bid." Review Branch (MCJCR), Hq AMC, will evaluate the facts presented and prepare an administrative determination according to § 2.405–2 (a) of this title. Notwithstanding § 2.405–2 (e) (5) of this title, contracting officers will not refer mistake in bid cases by wire dispatch or telephone to MCJCR when the determinations set forth in § 2.405–2 (a) (2) and (3) of this title are applicable since it is not possible to determine whether the evidence presented is clear and convincing without actual examination thereof.

7. Section 1002.406–3 (f) is added as follows:

(f) *Government property in bidder's possession.* If award is contemplated to a bidder who plans to use Government property in the bidder's possession under a facilities contract or other agreement independent of the IFB, the contracting officer will request evidence from the bidder that such facilities contract or other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon. The contracting officer will verify the evidence furnished by the bidder when the FCR is requested.

8. Section 1002.408–50 is deleted and the following substituted therefor:

§ 1002.408–50 *Preparation and transmittal of synopses*—(a) *General.* Purchasing officers will prepare and forward one copy of synopses to the addresses listed below. The synopsis will be forwarded before the close of business at the end of each week. It will be sent by airmail or ordinary mail, whichever is considered most expeditious, to the offices set forth in subparagraph (1) and (2) of this paragraph. The synopsis will be handcarried or sent through base mail channels, whichever is considered most expeditious, to the office set forth in subparagraph (3) of this paragraph. It will contain a brief description of the item (which will include the Federal, USAF Stock Number, or Project Identification Number where applicable), quantity, IFB or RFP number, amount of award, name of contractor and address and in addition on negotiated contracts, the information set forth in paragraph (b) below. Negative summaries are not required. (RCS: AFR–XDC–N2 is assigned to this report).

(1) U. S. Department of Commerce, 433 West Van Buren Street, Room 1300, Chicago 7, Ill.

(2) Procurement Information Center, Office of the Deputy Chief of Staff for Logistics, Department of the Army, Room 732, Old Post Office Building, Washington 25, D. C.

(3) Public Information Office at the activity preparing the synopses.

(b) *Negotiated contracts.* On all negotiated contracts which require synopsizing, the number of prospective bidders solicited, the number of proposals received, and the name and address of each bidder receiving an award, will also be furnished.

9. Section 1002.503–1 (a) is changed to read as follows:

(a) The Directorate of Engineering Standards, Wright Air Development Center, ARDC, issues a daily activity report which lists and identifies all specifications covering commodities requiring qualification testing which are used by the Air Force. Using this daily report as its notification, Contract Distribution and Files Branch (MCPSD), Hq AMC, and the responsible office at AMC field procurement activities will notify all known manufacturers by letter stating the AF policies on procurement of qualified products and encouraging interested manufacturers to contact the Directorate of Engineering Standards, Wright Air Development Center, ARDC, for engineering data, specifications, and instructions for authorization of tests. Manufacturers whose names appear on the list of debarred or ineligible bidders will not be so notified (see § 2.504–7 of this title) provided, that with reference to Type B listings (see § 1.608 of this

title), such listed manufacturers will be so notified if the qualified products is not in the category prescribed by the Secretary of Labor (see § 1.603–3 of this title). MCPSD also will forward each specification number, nomenclature, and name of qualified activity, listed in the daily activity report, to the U. S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago 7, Ill., for publication in the daily "Synopsis of U. S. Government Proposed Procurement, Sales and Contract Awards."

10. Section 1002.504–3 is added as follows:

§ 1002.504–3 *Distribution of qualified products list, letter notice of qualification, and other qualification information by the Government.* The "Index of Specifications and Related Publications (used by) U. S. Air Force" contains a listing of items and specifications on which Qualified Products Lists or AN Bulletins have been issued, setting forth the manufacturer. Copies of the foregoing publications may be obtained from the Commander, AMC, attn: MCSIF.

11. Section 1002.2001 is amended by adding Note 7 to "Terms and Conditions of the Invitation for bids":

NOTE 7: (The following is applicable only to AMC central procurement IFB's.) *Government property in bidder's possession.* Bidders may use, in performing the work bid upon, any items of Government property in the bidder's possession under a facilities contract or other agreement independent of this invitation for bids at the rental rates stipulated in such facilities contract or other agreement provided such facilities contract or other agreement authorizes such use. If the bidder plans to use such Government property, the bidder will so state in the bid. In such event the bidder agrees to furnish, upon request of the contracting officer, evidence that a facilities contract or other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon. Bids submitted contingent upon the use of such property on a "no-charge for use," "rent free" or other no charge basis will be considered non-responsive to this invitation for bids and will be rejected.

12. Section 1002.2003–1 is amended by adding (a), (b) and (c) as follows:

(a) When special conditions are included in the IFB which require the bidder to furnish certain data, e. g., descriptive literature, with his bid and the data will be evaluated by an activity other than the procurement activity, the data submitted by responsive bidders will require special handling as set forth in paragraph (b) and (c) of this section.

(b) The contracting officer will extract the bid forms and any reference to price from the bid and forward only the data to the appropriate engineering activity in sealed packages which will be numbered consecutively beginning with number one for the bidder whose price is the lowest. In addition the engineering activity will be furnished one complete blank bid set including all data such as specifications, drawings, and any other material furnished the bidders. The engineering activity will open the packages in order beginning with number one and continuing until data is found which meets the requirements of the IFB. The engineering activity will furnish a report in all cases where it finds that the data furnished fails to meet the minimum requirements of the IFB and will specifically set forth the reasons for the failure. The remaining packages will remain unopened and returned to the contracting officer along with the data which has been evaluated.

(c) There may be instances where the number of bids received and the accompanying data may be voluminous so that the expense of transmitting the data to the engineering activity for evaluation will be excessive. In such instances, the number may be reduced by not forwarding for evaluation the highest bid as to price, the next highest bid as to price, etc. However, the engineering activity will be advised of the total number of responsive bidders that have submitted data for evaluation. The engineering activity will be requested to notify the contracting officer by the most expeditious means in the event none of the packages of data forwarded for evaluation meet the requirements of the IFB. Upon receipt of such notification, the contracting officer will forward additional packages of data for evaluation.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1003—PROCUREMENT BY NEGOTIATION

1. Section 1003.101–53 (d) (2) and (e) thru (h) are deleted and the following substituted therefor:

(d) *Selection of sources to be solicited.* (1) * * *

(2) A major consideration to the AF negotiator is that contractors provide their own industrial facilities in lieu of Government provision of facilities. When Government facilities are required, analysis of quotations will adhere strictly to § 13.407 of this title.

(e) *Request for proposals.* Request for Proposals (RFP's) will:

(1) Contain a special provision substantially as follows (see § 9.111 of this title): When a bidder's proposal exceeds $50,000 in total amount and contains a cost or charge for royalties in excess of $250, the following information must be furnished on each separate item of royalty.

(i) Name and address of licensor.

(ii) Date of license agreement.

(iii) Applicable patent numbers or patent application serial numbers.

(iv) Brief description, including any part or model numbers of each item or component on which the royalty is payable.

(v) Percentage of dollar rate of royalties.

(vi) Total dollar amount of royalties.

(2) Contain the provisions set forth in § 1053.101–6 (b) of this chapter where required by § 1053.101 of this chapter. (See also § 1053.101–6 (b) of this chapter for the clause to be inserted in contracts resulting from RFP's containing the above-cited provisions.)

(3) Require prospective contractors, during the proposal stage, to identify in appendix listings and justify their requirements for Government industrial facilities. The contractors' justifications should include statements with respect to schedules of the appendix (§§ 1013.2403 and 1013.2404 of this chapter) and why additional facilities are required, with Government financing, over and above facilities which contractors will provide. See § 3.101 (xviii) of this title and §§ 1013.102–3, 1013.401 and 1013.2402 (d) of this chapter.

(4) For discussion of pricing considerations of requests for proposals see § 3.802–3 of this title.

(f) *Evaluating proposals.* Proposals from contractors will be received and evaluated by the buyer and/or contracting officer. They may consult with the initiator of the procurement or other technical or supervisory personnel who have a management responsibility in the procurement, but the responsibility for source selection is that of the contracting officer. In certain cases it may be desirable to resort to an engineering evaluation as an aid in the selective process. Engineering and like evaluations, however, are only aids to proper selection.

2. Section 1003.101–54 is deleted and the following is substituted therefor:

§ 1003.101–54 *Conduct of negotiations.* The following principles and practices will be adhered to by procurement personnel in the conduct of negotiations.

(a) The contracting officer must be fair in dealing with prospective contractors. The following examples are considered to be unfair:

(1) Revealing to one prospective contractor, in advance of soliciting proposals from other contractors, the fact that a certain procurement is about to be placed.

(2) Accepting a quotation with knowledge that the quoting contractor has failed to understand clearly what is expected of him.

3. Sections 1003.105 through 1003.106–50 are added as follows:

§ 1003.105 *Aids to labor surplus areas in negotiated procurements.*

§ 1003.105–1 *General.* In implementing the policy set forth in § 1001.302–4 of this chapter, quantities of negotiated procurements may be set aside in the same manner as provided in § 2.205 of this title for formally advertised procurements. The determination of quantities to be set aside will be governed by § 2.205–2 of this title.

§ 1003.105–2 *Special conditions to be inserted in requests for proposals.* Whenever it has been determined to set aside a quantity of a procurement according to § 1.302–4 of this title and § 1001.302–4 of this chapter the provision as set forth in § 1002.205–3 of this chapter will be included in the RFP covering procurement of the items not set aside.

§ 1003.106 *Dissemination of procurement information.*

§ 1003.106–1 *Synopsis of proposed procurements.* See § 1002.206 of this chapter.

§ 1003.106–2 *Synopsis of contract awards.* See § 1002.408 of this chapter.

§ 1003.106–3 *Award information to unsuccessful offerors.*—(a) *Notice to unsuccessful offerors.* Although § 3.106–3 (a) of this title makes it mandatory that written notice be given to unsuccessful offerors in certain instances, it does not preclude or prohibit written notice to unsuccessful offerors in other instances, whenever the contracting officer considers it necessary to issue such written notices.

(1) The words "contract is exclusively for experimental, developmental, or research work" mean the contract has been negotiated pursuant to §§ 3.201–2 (b) (4) or 3.211 of this title. .

(i) The words "unit prices" mean the actual unit price in the case of fixed price contracts, the target unit price in the case of redeterminable or incentive contracts, or the total estimated cost including fee if applicable in the case of cost-reimbursement type contracts.

§ 1003.106–4 *Publicizing award information.* (a) A copy of each unclassified written notice required by § 3.106–3 (a) (1) of this title will be furnished by the concerned contracting officer to the office responsible for displaying IFB's for public posting by that office for at least 7 days.

(b) The words "press releases or public announcements" mean releases or announcements made through the AF Office of Information Services and does not change procedures with respect to synopsis of contract awards covered by §§ 2.408 and 3.106–2 of this title.

§ 1003.106–50 *General information.* The procedures of § 3.106 of this title and § 1003.106 are not intended to apply to requests from suppliers for general information concerning purchases made over extended periods of time, such as a request for information on the number of parachutes purchased during a year and the prices paid. Such requests will be returned and the inquirer informed that it is not AF policy to compile and disseminate such information.

4. Sections 1003.109, 1003.109–50 and 1003.109–51 are added as follows:

§ 1003.109 *Restrictions on disclosure of data in proposals.*

§ 1003.109–50 *Application.* The legend set forth in § 3.109 (a) of this title may be used only on material submitted in response to a Request for Proposal under a negotiated procurement. It is not authorized in connection with bids submitted as a result of the issuance of IFB's. It may not be placed on data delivered under a contract, unsolicited proposals, or other papers.

§ 1003.109–51 *Limitation.* Only the verbatim text of the notice set forth in § 3.109 (a) of this title may be employed. Similar notices, additions or deletions of language are not authorized.

5. Section 1003.201–1 is deleted.

6. Section 1003.201–2 is changed to read as follows:

§ 1003.201–2 *Application.* (a) All negotiated contracts in excess of $1,000 but not in excess of $2,500 will use the authorization contained in § 3.201 of this title rather than any other authorization set forth in Subpart B Part 3 of this title, except for personal and professional services contracts which will be negotiated under the authority of 10 U. S. C. 2304 (a) (4). See § 1003.204.

(b) Negotiated procurements other than the categories mentioned in § 3.201–2 (b) of this title must be authorized by appropriate subsections of 10 U. S. C. 2304 (a). See § 1003.250. Purchases or contracts negotiated under the categories mentioned in § 3.201–2 (b) of this title will cite 10 U. S. C. 2304 (a) (1) on the face of the DD Form 351, 1155, 746–2 as appropriate and no further written determinations and findings are required.

7. Section 1003.201–50 is added as follows:

§ 1003.201–50 *Limitations on the use of 10 U. S. C. 2304 (a) (1) for modifications authorized by existing contracts.* (a) Except in connection with contracts of the categories listed in § 3.201–2 (b) of this title the authority of 10 U. S. C. 2304 (a) (1) will not be used for:

(1) Increase or decrease of funds obligated on contracts through supplemental agreements or contract amendments issued pursuant to provisioning procedures incorporated in the contract for concurrent spare parts or other accessorial equipment specified to be delivered under the contract.

(2) Supplemental agreements, or contract amendments issued pursuant to contractual provisions relating to increase-decrease quantity options or extras.

(3) Supplemental agreements or contract amendments for concurrent spare parts or other accessorial equipment not originally provided for in the contract.

(4) Orders (which obligate funds) against contracts or agreements upon which funds were not obligated.

(b) The authority of the basic contract will be used for:

(1) Increase or decrease of funds obligated on letter contracts and cost-reimbursement type contracts; provided, however, such increase or decrease is not the result of a change in the scope of work or quantities to be delivered.

(2) Change Orders, Supplemental Agreements, or contract amendments issued pursuant to contractual provisions relating to changes, changed conditions, price escalation, price redetermination, incentive, termination for convenience, default, taxes, and variation in quantity caused by conditions of loading, shipping or packing, or allowances in manufacturing processes.

8. Section 1003.202–3 is added as follows:

§ 1003.202–3 *Limitation.* Determinations and findings will be prepared, and approved. The contracting officer will require the initiating activity to furnish him such written justification of the circumstances of the exigency as he may feel essential in case he has not sufficient personal knowledge of the facts constituting the exigency. This justification will specifically include a statement of the injury that would be suffered by the Government, financially or otherwise, if the supplies or services were not furnished by a certain date.

9. Section 1003.204–1 is changed by deleting (b) and substituting the following therefor:

§ 1003.204–1 *Authorization.* * * *

(b) Department of Defense Appropriations Act, 1958 (Pub. Law 117, 85th Cong.), states:

SEC. 601. During the current fiscal year, the Secretary of Defense and the Secretaries of the Air Force, Army and Navy, respectively, if they should deem it advantageous to the national defense, and if, in their opinions, the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), but at rates for individuals not in excess of $50 per day under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: *Provided*, That such contracts may be renewed annually.

10. Section 1003.204–2 is deleted and the following substituted therefor:

§ 1003.204–2 *Application.* The general authority contained in § 3.204–1 of this title will be used only with respect to contracts for personal or professional services which are otherwise specifically authorized by law, as in the preceding section. A determination by the Secretary is required by acts of Congress other than that set forth in Chapter 137, Title 10, U. S. Code and if such determination is obtained, no separate determinations and findings are required.

(a) *Services authorized.* The provisions of the Appropriation Act quoted in § 1003.204–1 (b) affect each contract for expert or consultant services (such as architectural, engineering, technical, or professional services) made with any individual or made with a firm or corporation which is engaged primarily in the business of furnishing such services, and each contract for the employment of services of accountants or other experts to assist in inaugurating new or changing old methods of transacting business of the Air Force. Except as stated above, the provisions do not apply to any contracts with firms or corporations for services related to the development, invention, design, procurement, production, repair or maintenance of supplies, material, or facilities, or to any other type of contract.

(b) *Citation of statutory authorities.* Each contract or supplemental agreement described in paragraph (a) above will cite as authority section 10 U. S. C. 2304 (a) (4), section 15 of the act approved August 2, 1946 (Pub. Law 600, 79th Cong.) (60 Stat. 810; 5 U. S. C. 55a), and the applicable section of the current appropriation act.

11. Sections 1003.208 and 1003.208–2 are added as follows:

§ 1003.208 *Supplies purchased for authorized resale.*

§ 1003.208–2 *Application.* (a) In addition to meeting the requirements set forth in § 3.208–2 of this title, the proposed procurement must concern supplies which are authorized for local purchase by AFR 145–8, AFR 145–11, or other related AF publications.

(b) For procurements estimated to exceed $10,000, the requirement for "suitable advance publicity" will be deemed to be complied with if written requests for proposals are circulated to business concerns engaged in manufacture and/or sale of the supplies involved, including qualified dealers known to have current interest in selling such supplies to the Government. (See § 1003.101–53 (d) (1) for selection of sources.)

12. Sections 1003.210, 1003.210–2, 1003.210–3, 1003.211, 1003.211–1, 1003.211–2, 1003.211–3, 1003.213, 1003.213–3, 1003.214, 1003.214–3, 1003.215, 1003.215–2, 1003.217, 1003.217–2 and 1003.250 are added as follows:

§ 1003.210 *Supplies or services for which it is impracticable to secure competition by formal advertising.*

§ 1003.210–2 *Application.* 10 U. S. C. 2304 (a) (10) authorizes negotiation for property or services for which it is impracticable to obtain competition. The title of § 3.210 of this title in its implementation of 10 U. S. C. 2304 (a) (10), adds the words "by formal advertising." Where more than one source exists, competitive negotiation will be accomplished wherever possible. Circumstances with respect to which this authority may be used, as listed in § 3.210–2 of this title and this section are not illustrative, and not necessarily all inclusive. Application of the circumstances with respect to which the authority may be used is as follows, identified by the corresponding ASPR paragraph designation:

(a) "When the supplies or services can be obtained from only one person or firm ('sole source of supply')". When considering determinations and findings, contracting officers and approving officials will exercise due care before a determination is made that a particular item can be obtained from only one person or firm. Complete sole source substantiation must be included in the determination and finding. Merely citing this authority will not suffice.

(b) [Reserved.]

(c) "When bids have been solicited pursuant to the requirements of section II, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation of bids) has been received from a responsible bidder." This authority may be used only if the negotiation is for the identical requirements of the Invitation for Bids. If specification deviations are authorized or the delivery requirements or quantities are changed, consideration must be given to advertising the revised requirements or negotiating under some other exception.

NOTE: Contracting officers may continue use of advertised forms (Standard Forms 30 and 26) to consummate procurement by negotiation. If Standard Form 30 is used, a Standard Form 26 will be placed with it. The negotiation authority will be cited across the face of Standard Form 26 as follows: "This negotiated contract is entered into pursuant to the provisions of 10 U. S. C. 2304 (a) (10) and any required determination and findings have been made."

(d) "When bids have been solicited pursuant to the requirements of Section II, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids." The distinction between §§ 3.210–2 (d) and 3.215 of this title (which requires a determinations and findings by the Assistant Secretary of the Air Force) will be carefully observed.

(e)—(f) [Reserved.]

(g) "When the contemplated procurement is for technical, non personal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature". Illustrations under this authority are:

(1) Field engineering services.

(2) Technical representative services.

(3) Specialized maintenance training.

(4) Maintenance and operation of Radio Link Relay Station.

(5) Services in operation, maintenance, and training of personnel and improvement of communication system.

(h) [Reserved.]

(i) "When the contemplated procurement involves maintenance, repair, alterations or inspection, in connection with any one of which types of services the exact nature or amount of the work to be done is not known." Examples under this authority are the following only when the exact nature or the amount of the work to be done is not known:

(1) IRAN (inspection and repair as necessary).

(2) Overhaul of aircraft engines.

(3) Instrumentation.

(4) Repair and overhaul of components of complex electronic systems.

(5) Services to modify aircraft stabilizers.

(6) Repair and modification, test, preparation for storage, and shipment of propeller assemblies.

(7) Drop-in maintenance of aircraft.

(j)–(l) [Reserved.]

(m) "When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services." This authority will not be used for procurement of any item covered by an approved specification listed in § 1.305 of this title. When full and free competition can be obtained with the specifications, exhibit, or purchase description and award is contemplated to be made to the lowest responsible bidder, the procurement will be formally advertised. Cases of doubt will be resolved in favor of formal advertising.

(1) Aircraft flight testing.

(2) Handbooks and data.

(3) Procurement of performance specification and test outline for flight simulators.

(n) "When, under the procedures set forth in joint regulation DOD 4145.16–R AR 743–455, NAVSANDA PUB 297, AFR 67–61, and NAVMC 1133, the contract is for storage (and related services) of household goods."

(o)—(v) [Reserved.]

(w) Facility contracts under Part 13 of this title, and this part.

(x) When the contemplated procurement covers a qualified product and only one product has been approved and no other supplier can be approved prior to bid opening date if an invitation for bids were to be issued. Section 2.505–2 of this title states that awards will be made only for such products as have, prior to the time set for opening of bids, been tested and approved, thereby prohibiting award of contract for any other product. However, all AMC personnel will comply with § 1002.503–1 of this chapter in repeated efforts to encourage manufacturers to submit articles for qualification test and approval in order that noncompetitive procurement are held to the absolute minimum.

§ 1003.210–3 *Limitation.* It is essential that first consideration be given to the practicability of effecting procurement by formal advertising. If such consideration leads to the definite conclusion that procurement by formal advertising is impractical and none of the authorities set forth in §§ 3.211, 3.213, 3.214, 3.215 and 3.216 of this title is applicable as a basis for negotiation, the contracting officer will prepare and sign determinations and findings. Each such determinations and findings will set forth with particularity the reason why competition by formal advertising is determined to be impracticable. (See § 1003.210–2 for examples of circumstances in which this authority may be used.)

§ 1003.211 *Experimental, developmental, or research work.*

§ 1003.211–1 *Authority.* Except for negotiated contracts authorized under §§ 3.201–2 (b) (4) or 3.205 of this title, contracts for experimental, developmental, or research work will be negotiated under this authority.

§ 1003.211–2 *Application.* (a) Procurements for experimental, developmental, or research work will be negotiated under this authority notwithstanding the security classification of the resulting contract.

(b) When both educational and commercial institutions will be solicited, the estimated cost of the procurement is over $100,000, a 10 U. S. C. 2304 (a) (11) determinations and findings is required. However, if the resulting contract is awarded to an educational institution, it will cite 10 U. S. C. 2304 (a) (5), and 10 U. S. C. 2304 (a) (11) determinations and findings will not be used.

(c) When the estimated cost of the procurement is in excess of $100,000, and a 10 U. S. C. 2304 (a) (11) determinations and findings has been obtained, but the resulting contract does not exceed $100,000, then the contract will cite 10 U. S. C. 2304 (a) (1) if the contract is with a commercial organization or 10 U. S. C. 2304 (a) (5) if the contract is with an educational institution, and the 10 U. S. C. 2304 (a) (11) determinations and findings will not be used.

(d) When the estimated cost of the procurement is $100,000 or less, and 10 U. S. C. 2304 (a) (1) is the authority for negotiation, but if it is found that the resulting contract will exceed $100,000, then a 10 U. S. C. 2304 (a) (11) determinations and findings will be obtained prior to execution of the contract.

(e) In procurements with more than one phase, where it is anticipated that more than one phase will be performed under the contract, the total estimated cost of all phases will determine the need for a determinations and findings regardless of the fact that the estimated cost of the first phase is $100,000 or less.

(f) In the case of procurements in which the total estimated cost is over $100,000 but which are partially financed by an amount of $100,000, or less, the total estimated cost will determine the need for a determinations and findings.

(g) In those cases under paragraphs (c) and (d) above, where the 10 U. S. C. 2304 (a) (11) determinations and findings is not used, Hq USAF will be so notified.

§ 1003.211–3 *Limitation.* Notwithstanding the foregoing, formal advertising procedures will be employed wherever practicable in the procurement of supplies for experimentation, development, research, or test.

§ 1003.213 *Technical equipment requiring standardization and interchangeability of parts.*

§ 1003.213–3 *Limitation.* Where the Secretary has not previously authorized standardization upon items to be procured, a request for determinations and findings to negotiate pursuant to this authority will contain the information required by AFR 67–104 and will be processed according to that regulation. Such a request will generally be a request for a blanket determinations and findings covering all purchases of the item within the area for which the item is to be standardized, and subject to the time limitations for standardization expressed in AFR 67–104.

§ 1003.214 *Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.*

§ 1003.214–3 *Limitation.* (a) The statute requires that the following elements be present in a proposed procurement to negotiate under section 10 U. S. C. 2304 (a) (14).

(1) The supplies being purchased must be of a technical or specialized nature, requiring either:

(i) Substantial initial investments (dollars).

(ii) An extended period of preparation for manufacture.

(2) Advertising and competitive bidding to procure the supplies either:

(i) May require duplication of investment or preparation already made.

(ii) Will unduly delay procurement of the supplies.

§ 1003.215 *Negotiation after advertising.*

§ 1003.215–2 *Limitation.* (a) The term "rejection of such bids" appearing in § 3.215–2 of this title is interpreted to mean "rejection of all unreasonable bids."

(b) The above interpretation has been informally agreed to by the General Accounting Office and will permit the following actions:

(1) Award to low bidders at reasonable prices for items or quantities on which reasonable bids are received.

(2) Rejection of all other responsible bids following a determination by the Secretary that such bid prices, after formal advertising, are not reasonable.

§ 1003.217 *Otherwise authorized by law.*

§ 1003.217–2 *Application.* (a) Except as indicated in paragraphs (b), (c), and (d) below, contracts will be negotiated under authorities other than those set forth in Subpart B, Part 3 of this title, only upon the approval of the Secretary.

(b) Transportation services by common carriers will be negotiated under authority of section 321, Part III, Interstate Commerce Act, September 18, 1940, U. S. C. 65.

(c) Procurements negotiated pursuant to section 406 of Title IV of Public Law 345 (84th Congress), do not require Secretarial approval under 10 U. S. C. 2304 (a) (17).

(d) Blind-made supplies purchased through National Industries for the Blind as prescribed in § 5.504–2 of this title will be negotiated under authority of the act of June 25, 1938, c. 697, section 3, 52 Stat. 1196 (41 U. S. C. 48).

§ 1003.250 *Citation of law.* All contracts made according to Part 3 of this title, and this part will refer specifically to the subsection in section 2304 (a) of Title 10, U. S. Code, under which the award or contract was negotiated.

13. Section 1003.401 is deleted and the following substituted therefor:

§ 1003.401 *Types of contracts.* The major types of approved AF contracts are summarized and identified in the following chart. More detailed discussion relating to the nature and effect of individual types, conditions for use, rules for administration, and the respective clauses, where applicable, are set forth in the sections identified in the chart.

Type of contract	Identification	ASPR and AFPI reference
(a) Fixed Price Type Contracts.	----------	§§ 3.403; 1003.403.
(1) Firm Fixed Price Contract.	FP	§§ 3.403–1; 1003.403–1.
(2) Fixed Price Contract With Escalation.	FPE	§§ 3.403–2; 1003.403–2.
(3) Fixed Price Contract Providing for the Redetermination of Price.	FPR	§§ 3.403–3 (a); 1003.403–3 (a).
(A) Form A.	FPR–A	§§ 3.403–3 (b) (1); 1003.403–3 (b) (1).
(B) Form B.	FPR–B	§§ 3.403–3 (b) (2); 1003.403–3 (b) (2).
(C) Form C.	FPR–C	§§ 3.403–3 (b) (3); 1003.403–3 (b) (3).
(D) Form D.	FPR–D	§§ 3.403–3 (b) (4); 1003.403–3 (b) (4).
(E) Form E.	FPR–E	§§ 3.403–3 (b) (5); 1003.403–3 (b) (5).
(F) Form F.	FPR–F	§§ 3.403–3 (b) (6); 1003.403–3 (b) (6).
(4) Fixed Price Incentive.	----------	§§ 3.403–4; 1003.403–4.
(A) Initially Firm Target.	FPIF	§§ 3.403–4 (a) (1); 1003.403–(a) (1).
(B) Delayed Firm Target.	FPIR	§§ 3.403–4 (a) (2); 1003.403–4 (a) (2).
(b) Cost Reimbursement Type Contracts.	----------	§§ 3.404; 1003.404.
(1) Cost (without fee).	CR	§§ 3.404–1; 1003.404–1.
(2) Cost sharing	CS	§§ 3.404–2; 1003.404–2.
(3) Cost-Plus-A-Fixed-Fee.	CPFF	§§ 3.404–3; 1003.404–3.
(4) Cost-Plus-Incentive-Fee.	CPIF	§§ 3.404–4; 1003.404–4.
(c) Other Types of Contracts.	----------	§§ 3.405; 1003.405.
(1) Time and Material.	T–M	§§ 3.405–1; 1003.405–1.
(2) Labor-Hour	L–H	§§ 3.405–2; 1003.405–2.
(3) Letter Contract.	LC	§§ 3.405–3; 1003.405–3.
(4) Basic Agreement.	BA	§§ 3.405–4; 1003.405–4.
(5) Indefinite Delivery Type Contracts.	----------	§§ 3.405–5; 1003.405–5.
(A) Definite Quantity Contract.	DQ	§§ 3.405–5 (a); 1003.405–5 (a).
(B) Requirements Contract.	RC	§§ 3.405–5 (b); 1003.405–5 (b).
(C) Indefinite Quantity Contract.	IQ	§§ 3.405–5 (c); 1003.405–5 (c).

14. Sections 1003.402 and 1003.402–1 are deleted and the following substituted therefor:

§ 1003.402 *Selection of contract type.* (a) Type of contract and pricing (Subpart H of this part) are interrelated and must be considered together in negotiation, even though they are treated separately for discussion purposes in this Instruction. It is the AF procurement pricing policy to procure supplies and services at proper firm prices whenever possible. In the event this is not possible in the initial stages of procurement the objective is to arrive at subsequent firm prices at the earliest possible date. Proper prices are defined as fair and reasonable prices, or prices that will result in the best price to the Air Force, desired quality, delivery, and other factors considered. Proper prices provide contractors with a real incentive for economy and efficiency, particularly in the use of materials and labor. They give due regard to the profit factor as the motivating force in achieving this objective. The incentive or increased profit approach should be applied to all negotiations. (See Subpart H of this part.) Sound procurement, therefore, requires discriminating choice of the right type of contract. This selective process requires the exercise of judgment to determine the type of contract best suited to each individual negotiated procurement. No absolute rules can be laid down, but there are numerous factors bearing on this problem which should be considered when negotiating an appropriate type of

contract. Among these factors are the following:

(1) *The type and complexity of the item.* The type items procured by the Air Force will vary from the most simple items to those which are very complicated and difficult to develop and assemble. The more complex the item, the greater is the possibility that unexpected difficulties may occur in the course of contract performance. Complexities may arise individually in engineering, tooling, production, procurement, etc., or in combinations of these factors. Such complexities may generate a price conservatism on the part of prudent management that will be reflected either in substantial contingency charges or the need for some type of price protection. Conversely, the less complicated an item, the more susceptible it is to firm pricing.

(2) *The urgency of the requirement.* Urgency may be so great as to override prior consideration of other factors and dictates selection of a letter contract at the outset. (See § 1003.405–3.) Further consideration of other factors should subsequently be taken into account in selecting the definitive type of contract.

(3) *The period contract performance and length of production run.* A contract involving a 12 months' lead time prior to delivery of the first item and 12 months' delivery (total of 24 months from award) will introduce many more contingencies into the pricing, particularly in times of economic uncertainty, than will a contract calling for completion within 6 months from date of award. Also the length of the production run will directly affect the opportunities for cost reduction efforts. Thus an extended period of performance, as well as complexity, may favor other than a firm fixed-price contract. Alternatively, a relatively simple item previously procured at frequent intervals should be procured on a firm price basis.

(4) *The degree of competition present.* Competition is defined as a real striving for the business by two or more suppliers. It is the best method available for evaluating reasonableness of price. Competition, when apparent, should normally be relied upon to achieve sound firm prices. However, the value of competition, as a measure of fairness of price, depends in a large degree on the proximity of the competitors to each other price wise. There may be competitive situations, however, where the factors mentioned in subparagraphs (1), (2), or (3) of this paragraph are so strong as to preclude realistic or effective price competition justifying a firm fixed-price. Also where substantial initial capital investment (sometimes including design investment) is necessary on the part of a potential source which would be producing the item for the first time, realistic price competition justifying a fair and reasonable firm fixed-price may be absent.

(5) *The difficulty of estimating performance costs due to such factors as lack of firm specifications, lack of production experience, or instability of design.* Interwoven into these factors is the state of development of both the item being procured and the processes by which it is to be produced. It pertains to both the degree of such development prior to the contract and the further development in specifications, design and production ("know-how") during performance. While it must be clearly distinguished from item complexity as such, it may be directly related to the complexities involved in the "state of development." For example, an item may be extremely complex in nature, such as an electronics equipment or jet engine, but be completely developed and produced satisfactorily for a number of years. On the other hand, due to the general objective of the Air Force to advance the technology of weapons systems, many items necessarily are procured to performance specifications as distinguished from detailed specifications, and in many cases of complex research and development projects these specifications are truly pushing the state of the art. Such latter situations will generally preclude the use of firm fixed-price contracts. Conversely, when the specification is relatively firm and the item has previously been produced satisfactorily, a firm fixed-price contract may be quite feasible.

(6) *Availability of comparative price data, or lack of firm market prices or wage levels.* Comparative price data covering identical or similar items assist in the evaluation of the contractor's price proposal. If comparative data is not available, or where there are no firm market prices covering raw materials, or established wage levels, analysis is more difficult and a form of contract other than a firm fixed-price contract may be appropriate, particularly when real competition is absent, in order to have another look at the prices and wage levels during performance or at the completion of the contract.

(7) *Prior experience with the contractor.* Prior experience with the contractor may be very helpful in indicating the validity of his estimates. This knowledge puts the AF buyer in a better position to evaluate the present proposal and determine proper type of contract for the new procurement. However, where analysis of the proposal indicates the price to be fair and reasonable, the lack of prior experience with the contractor should not prevent the use of a firm fixed-price contract, if otherwise suitable.

(8) *Extent and nature of subcontracting contemplated.* The extent and nature of subcontracting contemplated in a given procurement will influence the analysis of the proposed price and the selection of type of contract. The fact that subcontracting is contemplated does not preclude use of a firm fixed-price contract, whether subcontract prices are or are not firm. Use of an appropriate repricing clause is warranted, however, if a substantial amount of subcontracting is contemplated, and that subcontracting is not covered by firm quotations for the entire contract, because the prime contractor's quotation may include a large contingency factor.

(9) *Assumption of business risk.* The risk assumed by the contractor is, in part, greater or smaller in proportion to the absence or presence of contingencies in price, or other proposed protective terms of a contract, together with their relationship to the aforementioned factors of complexity, period of performance, and competition. The degree of risk in a given situation must be compared with the estimated amount of the contingency that the contractor has included in his price proposal to determine whether procurement on a straight fixed-price basis with the necessary contingencies in the contract will be less expensive to the Government than use of an appropriate price redetermination, fixed-price incentive, or cost-reimbursement type contract which would eliminate or minimize initial inclusion of contingencies in price but would increase administrative costs.

(10) *Technical capability and financial responsibility of the contractor.* The technical capability of a given contractor will be determined through past experiences, from the investigation of his ability as in surveys for Facility Capability Reports, and from his past performance for the other services. The more technically capable contractor should be better able to estimate accurately his costs for the purposes of fixed-price contracting. The financial responsibility of a given contractor will be determined through the Facility Capability Reports and other financial data that are submitted on the contractor. The amount of Government contract financing and Government facilities available to the contractor must be given consideration to get a complete picture of financial position. The greater the financial stability and adequacy of a contractor, the greater the probability that he will be able to assume the full risk and be able to perform under a firm fixed-price type of contract. When first article acceptance is required, this factor is especially significant and should be carefully evaluated (particularly in conjunction with factors (1), (5), (7), and (9) above) in negotiating an appropriate type of contract on a fair and reasonable price basis.

(11) *Administrative costs of both parties.* Cost-reimbursement and redeterminable-type contracts require much more administrative control than firm fixed-price contracts. The most economical form, from the administrative point of view, is obviously the firm fixed-price type. Administrative costs should not be considered solely from the Air Force's but also from the contractor's point of view. A type of contract which required complex contractor administration generates additional costs which ordinarily will enter into the price paid by the Air Force, if not directly, at least through overhead.

(12) *The attitude of the contractor and the contracting officer.* This is by no means the least important factor. Rigid attitudes or preferences with respect to any one type of contract will be avoided. It is necessary that both parties to a negotiation preserve an open mind in this selective process. Preferences or prejudices towards the use of any one type of contract, without adequate con-

sideration of the major factors bearing on the selection, can result in inappropriate choice in the circumstances. A major factor in one case may be minor in another. It must be remembered that there is no type of contract that is foolproof. It is possible to misuse any type of contract. All of the types of contracts, or combinations thereof, must be considered together as a "kit of tools" with each type being the best tool to use in a particular procurement situation. (See paragraphs (c) and (d) of this section.)

(b) Early agreement will be reached between the Government and the contractor on the type of contract best suited to the procurement. In furtherance of the proper pricing policy, the firm fixed-price type contract will be used whenever possible, i. e., unless, under the applications and limitations of Subpart D, Part 3 of this title, and this subpart, the use of another type of contract is clearly more appropriate. This form affords the most effective means of reducing total cost to the Air Force when properly applied. It is under this type of contract that incentives to production efficiency are greatest and administrative costs minimized. It must be recognized, however, that quoted prices may contain questionable and often times substantial charges for contingencies which may be eliminated, at least in part, by the use of one of the other authorized types of contract. Price-redetermination types of contract have been devised to provide for the assumption of risk by the Government in consideration for the removal of contingencies with the objective of paying only for incurred or predictable contingencies. Cost-reimbursement type contracts provide that the Government will assume full risk, and may be employed in situations where the risks are so great as to make impractical any other method of contracting.

(c) The various types of authorized contracts identified in the chart have been designed to permit flexibility in negotiations. Each type meet a specific need, and each type has a field where it is potentially preferable to the other types. To determine appropriateness, the type of contract must be considered in the light of the particular procurement and surrounding circumstances.

(d) Contract files will include documentation in all cases to show the reasons why the particular type of contract was used.

§ 1003.402–1 *Limitations on use*—(a) *Conditions for use.* The specific sections of Subchapter A, Chapter I, of this title, and the specific sections of this subchapter (identified in the chart) relating to individual types of approved contracts set forth the specific limitations on their use. These limitations must be complied with.

(b) *Deviations from approved contract types.* For purposes of this Instruction a deviation from an authorized type of contract is construed to mean any departure from the descriptions, conditions for applicability, or limitations, referred to herein or any change, deletion from, or modification to the language of any applicable clauses set forth hereafter. (§ 1001.109 of this chapter establishes procedures for submitting and processing requests for approval of deviations from ASPR, AFPI, and AFPC.)

(c) *Obligation of funds.* The following rules apply to obligation of funds under each type of contract:

(1) *Firm fixed-price contract.* Obligations will be for the total amount of the contract.

(2) *Fixed-price contract with an escalation, price redetermination, or an incentive provision.* Obligations will be for the amount of the fixed price stated in the contract, or the target or billing price in the case of a contract with an incentive clause. For any type of contract having both a target and a ceiling price, obligation will be in the amount of the target price.

(3) *Cost-Reimbursement Type Contracts, Time and Material Contracts, and Labor-Hour Contracts.* Obligations will be for the amount of the total estimated costs or payments shown or provided for in the contract, but not in excess of the maximum current liability shown, including the fixed fee in the case of cost-plus-fixed-fee contracts and the target fee in the case of cost-plus-incentive-fee contracts.

(4) *Letter contracts.* (See § 1003.405–3 (c).)

(5) *Basic agreements.* Basic agreements do not create any monetary liability and require no obligation of funds.

(6) *Indefinite delivery type contracts.* Funds are obligated at the time of and to cover each call or order.

15. Section 1003.403 is deleted and the following substituted therefor:

§ 1003.403 *Fixed-price-type contracts.*

§ 1003.403–1 *Firm fixed-price contract; description.* No adjustment of the price is possible in this type of contract except in those rare instances where Public Law 921 procedures may be invoked. (See Part 1056 of this chapter.) The realized profit is dependent upon the ability to produce and to control cost. Thus, the contractor has the strongest incentive to minimize cost because he retains 100 percent of any savings. The Government, however, may benefit through any cost reductions in follow-on procurements for like items. The administrative burden and workload are at a minimum in using this type of contract since only one negotiation is necessary and ordinarily there is no need for advisory audit reports or concern with the contractor's accounting policies and methods.

§ 1003.403–2 *Fixed-price contract with escalation*—(a) *Applicability.* It is AF policy to avoid the use of price escalation clauses and to use them only when contractors will not accept a contract without including contingencies in their price. Such clauses reduce incentive to control certain elements of cost and subject the Government to a possible increase in price without any certainty of a corresponding increase in cost to the contractor for that contract. Likewise, this type of escalation will prevent the recognition that certain costs may go down the same time that costs subject to escalation may be rising which if an overall price were negotiated would result in an offset and agreement to the price originally negotiated.

(b) *Limitations.* Section 7.106 of this title sets forth the appropriate escalation clauses, with statements of the conditions under which they may be used. These clauses are authorized for use by AF procuring activities under those conditions but subject to the following additional limitations:

(1) Price escalation provisions will not be used under any of the following conditions:

(i) If reasonable firm fixed prices can be negotiated.

(ii) If an appropriate and authorized type of price redetermination contract can be used to offset contingencies and is acceptable to the contractor.

(iii) When the item to be procured is other than the standard or semistandard item normally sold at "established" or "published" prices in the commercial market or other than an item which the contractor customarily offers for sale commercially, modified according to the specification of the contract.

(iv) If delivery will occur within 90 days of the effective date of the contract.

(2) "Labor" and "material" escalation contracts are not authorized for use in AF procurement.

16. Section 1003.403–3 is added as follows:

§ 1003.403–3 *Fixed-price contract providing for the redetermination of price*—(a) *Description.* A sixth type, price redetermination upon the happening of specified contingencies, is available for AF use as provided in paragraph (j) of this section pursuant to an authorized ASPR blanket deviation.

(b) *Applicability.* Price redetermination clauses coupled with price and cost analysis are a means by which proper pricing may be achieved when the conditions for the use of firm fixed-price contracts cannot be sufficiently satisfied to assure reasonable pricing. The Government does not anticipate paying for contingencies in price except to the extent they actually occur or are reasonably predicted. The major problem underlying the use of price redetermination is to establish and maintain sufficient incentive through proper target or prospective pricing to induce the contractor to control his "controllable" costs. This problem, however, is a difficult one and requires the exercise of sound judgment by both parties in any given circumstances.

(c) *Limitations on use.* The following restrictions also are imposed on the use of price redetermination provisions by AF procuring activities.

(1) Price redetermination will never be used as a substitute for an intelligent initial analysis of price. The contracting officer should be satisfied that the contractor employs methods of estimating cost which accurately reflect current shop engineering expense and proper quantity and price allowances for material, labor, machine utilization, etc.

(2) No one price redetermination clause will be substituted for another, or be deleted from an existing contract or

award, nor will a combination of any types (where price redetermination is involved) be used in any procurement, without the prior approval of the Office of the Procurement Committee (MCPC), Hq AMC.

(3) Any special applications or limitations thereon relating to a particular clause in ASPR or hereinafter prescribed must be satisfied.

(4) Fixed-price contracts with provisions for price redetermination will not be used by foreign procurement activities except as noted below, and may be used by local purchase activities only if prior approval is obtained from MCPC, Hq AMC. Written requests should disclose that the conditions of use specified for the requested clause have been complied with and furnish reasons for requested use. Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA) and Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA) have authority to approve use of Forms A and C price redetermination clauses with power of redelegation to not below the level of the staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to AMFEA or AMFPA. Authority for use of Forms D and E may be obtained only on a case-by-case basis according to paragraphs (h) (2) and (i) (2) of this section.

(5) Retroactive types of price redetermination (Forms C, D, and E) will not be used if any other form, short of a cost-reimbursement type, can be reasonably applied. Contracts using Form C, placed by the buying divisions, Directorate of Procurement and Production, Hq AMC, require prior approval of the division chief as to the use of retroactive clause; in the AMC field procurement activities, by the direction of procurement and production of the installation, or his designated representative. The Forms D and E require prior approval as outlined in paragraphs (h) (2) and (i) (2) of this section.

(d) *General rules for administration.* See Subpart T of this part.

(e) *Form A (FPR–A) prospective periodic price redeterminations at stated intervals.*—(1) *Description.* In one sense this form provides a series of short term fixed-price contracts in lieu of one of long duration. The price for the first period will be based on projections which do not extend beyond that period. The periods need not be of equal length. To encourage timely repricing, paragraph (2) of Form A Clause should call for experienced costs at the end of a contractor's normal accounting period in sufficient time to permit negotiation of prices in advance of the new pricing period, and may even call for data 1 to 3 months in advance of the agreed upon reset point.

(2) *Applicability.* Form A may be used where the nature of the product, the relative intricacies of manufacture, the proposed methods of production, the experience of the contractor and his labor force, the prior use of the particular plant, the ability of the contractor to make reasonably accurate estimates, and other surrounding conditions are such that the applicability and limitations criteria of § 3.403–1 (b) and (c) of this title, and § 1003.403–1 (a) and (b) of this chapter can be met to the point that the Government and the contractor can agree upon a firm price for the first period of contract performance but are unable (because of contingencies which would otherwise be included) to be bound by that price for the subsequent periods. This type contract can provide a strong incentive if the repricing is accomplished in a timely fashion so that a completely prospective price is negotiated for each subsequent period. The contractor benefits profitwise from the cost savings generated during each fixed period following a prospective price redetermination and the Government should benefit in each successive fixed price period from the efficiencies, if any, achieved in the prior period by obtaining a reduced price for the subsequent period.

(3) *Limitations.* The general conditions and limitations set forth in § 1003.403–3 must be satisfied before this clause is used.

(4) *Forward pricing.* (i) The Form A (FPR–A) type contract is particularly adaptable to the "Forward Pricing" approach. The many individual contracts with one contractor or a division or plant thereof can be so drawn as to tie into uniform pricing periods. This approach should be considered as an intermediate step bridging the gap between redeterminable prices and firm fixed prices with the ultimate objective of contracting on a firm fixed-price basis as soon as experience with the contractor and general conditions warrant.

(ii) Forward pricing is the practice of pricing two or more contracts with the same contractor prospectively for the same period of time (from 6 to 12 months). Price redetermination of all outstanding redeterminable contracts is accomplished at the same time, prior to the next agreed upon period of performance. Form A is the type of contract used to implement this operation. Prices negotiated for the next prospective period become the contract prices. Unit prices are negotiated for each item on contract.

(iii) This approach may be applied in situations where the contractor has continuous AF business, a number of contracts, production is not too diversified, and the contractor employs adequate estimating and accounting procedures. Since the objective of this approach is to accurately project costs, and therefore prices, for items to be delivered during a given period, it is sometimes necessary for contractors to modify their accounting procedures to provide cost information in a timely and acceptable fashion. Similarly, because forecasting of prices is the basis of this operation, forward pricing must necessarily be restricted to production items on which some experience has been generated. Forward pricing negotiation involves forecasting contractor's overall anticipated production on an overall basis, by plant or division as the case may be.

(iv) Forward pricing has administrative advantages. It relieves the contractor and AF personnel from the duties of innumerable negotiations by efficiently concentrating effort on one larger negotiation. At the same time it permits more efficient scheduling of workloads. Audit reports can be reduced in number, if not in scope, and cost submissions and bid proposals for prospective periods by contracts on an individual contract basis are eliminated.

(v) All forward pricing arrangements will be monitored by the Pricing Staff Division (MCPPB), Hq AMC. Before any such programs are adopted by any procurement activity of the Air Force, they must be approved by MCPPB. The following procedures are indicative of the manner in which this approach may be implemented:

(*a*) Contractor submits pricing proposals. These should include supporting cost data by product for both direct and indirect costs, together with a statement of recent production costs to the agreed upon cutoff point, and a forecast of the same expenses for the next successive prospective period.

(*b*) Government advisory audit reports may be requested from time to time by the contracting officer, but with satisfactory experience audit reports may be waived or reduced in scope and increased reliance placed in negotiations upon the contractor's submissions. See § 3.809 of this title.

(*c*) The effectiveness of forward pricing depends on the timeliness of repricing. The aim should be to negotiate the new prices sufficiently in advance of the first day of the new pricing period. One principle that must be adhered to in negotiations is that over or under recoveries resulting from prior forecasts will not be offset by adjustments to future periods. In negotiation the Air Force will be represented by a team, generally consisting of representatives from the buying offices, the administrative contracting officer, price analyst, and auditor.

(*d*) Revised prices are developed on a product basis, any particular item having but one price for the next period.

(vi) Adoption of forward pricing does not preclude continued use of firm fixed-price contracts on short-run, small dollar procurements for similar items already on a forward pricing basis. Firm fixed prices should still be used whenever possible, even though longer term contracts for similar items are covered by a forward pricing contractual arrangement.

Form A (FPR–A) Clause. Prospective periodic price redeterminations at stated intervals.

FORM A CLAUSE

(1) The prices set forth herein may be increased or decreased in accordance with this clause.

(2) *Price periods.* The Government and the contractor agree to revise the contract prices under this contract periodically in accordance with this clause and agree that the performance of this contract will be divided into successive periods for that purpose. The first period will extend from _____ to _____; and the second and each succeeding period will extend for _____ months

from the end of the preceding period. The first day of the second and each succeeding period is hereinafter referred to as "the effective date of the price revision." _____ days before the end of each period hereunder, except the last, or at such time or times as the parties may mutually fix, the contractor shall furnish the statements and data referred to in paragraph (3) of this clause.

(3) *Submission of data.* At the time or each of the times specified or provided for in paragraph (2) of this clause, the contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items to be delivered in the succeeding period under this contract, itemized so far as practical in the manner which is prescribed in DD Form 784; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimates; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the contractors' accounts, records and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) Upon the filing of the statements and data required by paragraph (3) of this clause, the contractor and the contracting officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revision under this clause shall be conducted on the same basis, employing the same types of data (including, without limitations, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new Department of the Air Force contract.

(b) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision.

(5) *Disagreements.* If by the effective date of the price revision (or such further period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to revised prices for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(6) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (4) or (5) or (7) (b) (ii) of this clause.

(7) *Termination provisions.* For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" of this contract (including without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of delivered articles shall be deemed to be:

(a) For all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this clause) applicable to each such item;

(b) For all items delivered on or after the effective date of the price revision—

(i) The contract price as revised in accordance with this clause, if such revision shall have been agreed upon; and

(ii) If such revision shall not have been agreed upon, then such estimated prices as the contractor and the contracting officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause herein entitled "Disputes."

(8) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits uhder the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the contractor of cost data and price-redetermination offer, the contractor and the contracting officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered item (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(f) *Form B (FPR–B). Prospective price redeterminations on request.*—(1) *Limitations.* The Form B clause is not authorized for use in AF procurement.

(g) *Form C (FPR–C). Retroactive and prospective price redetermination at a stated time prior to completion.*—(1) *Applicability.* This type of contract is mainly applicable where: (i) new and complex items are involved, (ii) where major specifications or changes are contemplated, or (iii) where untried labor force, plant facilities, or manufacturing methods are anticipated. The maximum points for redetermination outlined in § 3.403–3 (b) (3) (i) of this title are to be taken as extreme limits and not as general rules. The general rule will be ahead of this point in time so that the mandatory redetermination may take place at the earliest possible time and in all cases before actual costs incurred amount to 60 percent of the total estimated costs. The blank space in paragraph (2) of the accompanying clause calling for the submission of data should establish a date early enough to permit negotiation of the new prices in advance of the prospective period for which they are applicable.

(2) *Limitations.* The general conditions and limitations set forth in § 1003.-403–3 must be satisfied before this clause is used.

Form C (FPR–C) clause. Retroactive and prospective price redetermination at a stated time prior to completion.

FORM C CLAUSE

(1) The prices of the supplies to be furnished hereunder may be increased or decreased in accordance with this clause. In no event shall the redetermined prices hereunder exceed _____.

(2) *Times for negotiation.* Upon completion of delivery of _____ percent of the (here specify the principal items to be furnished under the contract) to be furnished under this contract, the parties shall negotiate to revise the prices of all items theretofore and thereafter to be delivered _____ days prior to the completion of delivery of said _____ percent, the contractor shall furnish to the contracting officer the statements and data referred to in paragraph (3) of this clause.

(3) *Submission of data.* At the time specified in paragraph (2) of this clause the contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of all items under this contract itemized so far is as practicable in the manner prescribed by DD Form 784; (ii) and explanation of the differences between the original estimate and the new estimates; (iii) such relevant shop and engineering data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced cost of production hereunder to the extent that they are available at the time of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the contractor's accounts, records, and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) Upon the filing of the statements and data required by paragraph (3) of this clause, the contractor and the contracting officer will negotiate promptly in good faith to agree upon prices for items delivered and to be delivered. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data (including, without limitations, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new Department of the Air Force contract.

(b) After negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to delivered and to be delivered items hereunder.

(5) *Disagreements.* If within 30 days after the date on which the statements and data are required pursuant to paragraph (2) of this clause to be filed (or such further period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(6) *Payments.* Until new prices become effective in accordance with this clause, the prices in force initially shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (4) or (5) of this clause.

(7) *Termination during initial period.* In the event that this contract is terminated under the clause herein entitled "Termination for Convenience of the Government" or the contractor's right to deliver is terminated under the clause herein entitled "Default," so that the last delivery under the contract as terminated is made prior to the completion of the initial period as specified in paragraph (2) of this clause, the contractor within ------ days after such last delivery shall furnish the data required by paragraph (3) of this clause and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any disagreement as to the revised prices will be disposed of as a question of fact in accordance with the clause herein entitled "Disputes."

(8) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following item as reported by the Contractor from time to time as hereinafter provided: (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the contractor of cost data and price-redetermination offer, the contractor and the contracting officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purposes of this paragraph until final prices are established by supplement. For any quarter in which only the numbered item (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(h) *Form D (FPR-D). Retroactive and prospective price redetermination including further prospective redetermination upon request.*—(1) *Applicability.* This clause is appropriate, rather than Form C, only when the production schedule of the contract is of such length as to warrant a further look at prices subsequent to the initial redetermination.

(2) *Limitations.* The use of this form of contract requires prior written approval of Pricing Staff Division (MCPPB), Hq AMC. The request for approval will be submitted by the buyer or contracting officer. It will contain:

(i) Name of proposed contractor.

(ii) Statement that requirements of § 3.403–3 (a) (3) of this title and § 1003.403–3 (c) have been complied with.

(iii) Brief description of supplies and services being procured.

(iv) Unit and total prices, including both initial and ceiling.

(v) Method of selection of source; if competitive, state also unit and total prices proposed by rejected offerors including their proposals on ceilings if any.

(vi) Delivery schedule of supplies to be furnished under the contract, or scheduled date of completion of performance under contract for services.

(vii) Reasons why neither a straight fixed-price contract, cost reimbursement-type contract, nor other type of redetermination clause is considered appropriate.

(viii) A copy of the memorandum of price analysis will be submitted with the request for approval.

Form D (FPR-D) clause. Retroactive and prospective price redeterminations including further prospective redeterminations upon request.

FORM D CLAUSE

(1) The prices of the supplies to be furnished hereunder may be increased or decreased in accordance with this clause. In no event shall the initial redetermined prices hereunder exceed ------ (See § 1003.403–3 (k).)

(2) *Times for negotiation.* (a) Upon completion of delivery of ------ percent of the (here specify the principal items to be furnished under the contract) to be furnished under this contract, the parties shall negotiate to revise the prices of all items theretofore and thereafter to be delivered ------ days prior to the completion of delivery of said ------ percent, the contractor shall submit to the contracting officer proposed revised prices for items theretofore and thereafter to be delivered. At any time and from time to time after the completion of delivery of said ------ percent, subject to the limitation specified in this clause, either the Government or the contractor may deliver to the other a written demand that the parties negotiate to adjust the prices under this contract. No demand shall be made for a revision to be effective prior to 180 days after the completion of delivery of said ------ percent and thereafter neither party shall make a demand for a revision having an effective date within 180 days of the effective date of any prior revision. Each demand shall specify a date, not earlier than 30 days subsequent to the date of the delivery of the demand, as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price revision." Any demand under this clause shall state briefly the ground or grounds therefor.

(b) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated under the clause herein entitled "Termination for Convenience of the Government" no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(3) *Submission of data.* At the time of submitting proposed revised prices as provided for in paragraph (2) of this clause, and at intervals of not more than ninety (90) days thereafter, so long as any of the supplies or services called for by this contract remain undelivered, the contractor shall submit (i) a new estimate and breakdown of the unit cost of the items of this contract showing separately those items theretofore delivered and those items thereafter to be delivered, itemized so far as is practicable in the manner prescribed by DD Form 784; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimates; (iii) such relevant shop and engineering data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced cost of production hereunder to the extent that they are available; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. At the time or times of negotiation of revised prices the contractor will supplement

the data previously submitted with all of the more recent pertinent cost data available, or will certify that there has been no change in trend of costs sufficient to influence the negotiation of price. The Government may make such examination of the contractor's accounts, records, and books as the contracting officer may require and may make such audit thereof as the contracting officer may deem necessary.

(4) *Negotiations.* (a) As provided in paragraph (2) of this clause, the contractor and the contracting officer will negotiate promptly in good faith to agree upon prices for items delivered and to be delivered as the case may be on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data (including, without limitations, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new Department of the Air Force contract.

(b) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to delivered and to be delivered items as the case may be on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(5) *Disagreements.* If within 30 days after the initial submission by the contractor of proposed revised prices (or such period as may be fixed by written agreement), or if within 30 days after the date of demand by either party for a further revision of prices (or such period as may be fixed by written agreement) the contracting officer and the contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes," and the prices fixed by the contracting officer subject to modification on appeal pursuant to said clause shall conatitute the prices to be in effect during the period covered by the price redetermination. The foregoing shall not prevent either party from calling for additional price redetermination in accordance with provisions of this clause, or any other contract clause herein pertaining to price revision.

(6) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (4) or (5) or (7) (b) (ii) of this clause.

(7) *Termination provisions.* For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" (including without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of delivered articles shall be deemed to be:

(a) For all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this clause) applicable to each item;

(b) For all items delivered on or after the effective date of the price revision; (i) the contract price as revised in accordance with this clause if such revision shall have been agreed upon; and (ii) if such revision shall not have been agreed upon, then such estimated prices as the contractor and the contracting officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause herein entitled "Disputes."

(8) *Termination during the initial period.* In the event that this contract is terminated under the clause herein entitled "Termination for Convenience of the Government" or the contractor's right to deliver is terminated under the clause herein entitled "Default," so that the last delivery under the contract as terminated is made prior to the completion of the initial period as specified in paragraph (2) of this clause, the contractor within _____ days after such last delivery shall furnish the data required by paragraph (3) of this clause and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any disagreement as to the revised prices will be disposed of as a question of fact in accordance with the clause herein entitled "Disputes."

(9) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the contractor of cost data and price-redetermination offer, the contractor and the contracting offer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered item (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(i) *Form E (FPR-E). Retroactive price redetermination after completion*—(1) *Applicability.* (i) This type of contract is designed primarily for use in research and development contracting or for the procurement of supplies or services where the period of performance is so short as to preclude the use and administration of one of the other price redetermination clauses or a cost reimbursement type contract.

(ii) The price initially negotiated must bear a reasonably close relationship to the expected final price. In return for the protection afforded by a ceiling price in excess of the target price, it is expected that the contractor has removed the abnormal contingencies from his target price.

(2) *Limitations.* The use of this form of contract requires prior written approval of Pricing Staff Division (MCPPB), Hq AMC. The request for approval will be submitted by the buyer or contracting officer. It will contain:

(i) Name of proposed contractor.

(ii) Statement that requirements of § 3.403–3 (a) (3) of this title and § 1003.-403–3 (c) have been complied with.

(iii) Brief description of supplies and services being procured.

(iv) Unit and total prices, including both initial and ceiling.

(v) Method of selection of source; if competitive, state also unit and total prices proposed by rejected offerors including their proposals on ceilings if any.

(vi) Delivery schedule of supplies to be furnished under the contract, or scheduled date of completion of performance under contract for services.

(vii) Reasons why neither a straight fixed-price contract, cost reimbursement-type contract, nor other type of redetermination clause is considered appropriate.

(viii) Reason why ceiling exceeds or is the same as the initial price. A copy of the memorandum of price analysis will be submitted with the request for approval.

Form E (FPR-E) clause. Retroactive price redetermination after completion.

FORM E CLAUSE

(1) Because of the nature of the work called for by this contract and the uncertainty as to the cost of performance hereunder, the parties agree that the contract price hereof may be adjusted in accordance with the provisions of this clause.

(2) Within _____ (not exceeding 60) days after the completion or termination of this contract, the contractor will prepare and submit to the contracting officer a revised price proposal for the supplies and services furnished on the contract supported by a cost statement, itemized so far as is practi-

cal in the manner prescribed by DD Form 784, together with such other information as may be pertinent in the negotiation for a revised price pursuant to this clause. The contracting officer shall have the right at all reasonable times to make or cause to be made such examinations and audits of the contractor's books, records, and accounts as he may request.

(3) Upon the filing of the statement and other pertinent information required by paragraph (2) of this clause, the contractor and the contracting officer will promptly negotiate in good faith to agree upon a reasonable revised price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the contractor for the performance of this contract. In determining the extent of any estimated allowance for profit to be taken into account in fixing such revised price consideration will be given to the extent to which the contractor has performed the contract with efficiency, economy, and ingenuity. In no event shall the revised price exceed the sum of $_____. The revised price shall be evidenced by a supplemental agreement to this contract.

(4) If within _____ (not exceeding 90) days after the completion or termination of this contract or such further period as may be fixed by written agreement, the parties shall fail to agree upon a revised price in accordance with the provisions of this clause, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause herein entitled "Disputes."

(5) In the event of a price increase, the Government will pay or credit to the contractor the amount by which the revised price shall exceed the contract price aforesaid. In the event of a decrease in price, the contractor will repay or credit the amount of such decrease to the Government in such manner as the contracting officer may direct.

(6) For any of the purposes of the clause herein entitled "Termination for Convenience of the Government" (including without limitation, computation of "the total contract price" and "the contract price of work not terminated"), the contract price shall be the revised contract price agreed upon under paragraph (3) of this clause or determined under paragraph (4) of this clause, as the case may be.

(7) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments, until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the contractor of cost data and price-redetermination offer, the contractor and the contracting officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered item (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(i) *Form F (FPR-F). Price redetermination upon happening of specified contingency*—(1) *Description.* This type of contract provides for an equitable upward revision of prices upon the happening of a contingency specified in the clause as a "basic assumption."

(2) *Applicability.* This form is appropriate when, except for the specified contingency, accurate cost estimates can be projected and firm, reasonable prices negotiated initially. Its purpose is to limit any upward revision to the identified contingency situation, which is beyond the contractor's control. It may be noted that this clause is similar in its operation to the approved types of escalation clauses set forth in § 1003.403–2; the major differences being that the Form F contemplates certain identifiable contingent situations.

(3) *Limitations.* (i) This clause may be used only in motion picture production contracts.

(ii) The contractor must warrant that there is not included in the price any charge for the specified contingency.

(iii) The contingency must be such as to be outside the control of the contractor, i. e., weather, failure of Government to furnish equipment, etc.

(iv) The clause is not authorized for use to cover any of the following contingencies: (*a*) changes in taxes and duties, (*b*) changes in wage rates or employment conditions, (*c*) risks arising in relation to patents, (*d*) termination of contracts in whole or in part, and (*e*) changes in material costs.

(v) The applicable general conditions set forth in paragraph (b) of this section and the limitations in paragraph (c) of this section must be satisfied.

Form F (FPR–F) clause. Price redetermination upon happening of specified contingency.

FORM F CLAUSE

a. *Basic assumption.* The contractor represents the prices under this contract are on a fixed price basis compiled on the following assumption (hereinafter called the basic assumption).

1. That no standby time will be required, which is beyond the control and without the fault or negligence of the contractor, due to adverse weather conditions while on shooting location.

2. That no standby time will be required by the contractor due to the unavailability of Government personnel and equipment or other acts by the Air Force which is beyond the control and without the fault or negligence of the contractor.

b. In the event of the non-realization of the basic assumption, in whole or in part, and as a result there is an increased cost to the contractor, the parties agree that an equitable adjustment shall be made in the contract price from that non-realization.

c. Immediately upon the occurrence of standby time occasioned by the non-realization of the basic assumption, the contractor shall submit in writing to the contracting officer through the Air Force Field Project Officer, three copies of an interim report as to the cause of the delay, the number of personnel involved, the type of personnel involved, and the time involved. The Air Force Field Project Officer shall attach a letter of transmittal, to the contractor's claim, setting forth comments, recommendations and/or justification of the contractor's claim. Then within sixty (60) days after completion of the contract (or within such further period as the contracting officer may in writing allow before the date of final settlement of the contract) the contractor shall submit to the contracting officer through the Air Force Field Project Officer, three detailed copies compiling all claims which the contractor may then have for adjustment under this clause, setting forth the fact and extent of such non-realization of the basic assumption together with three copies of a detailed cost breakdown consistent with the breakdown of estimated cost furnished by the contractor in the Request for Proposal upon which this contract is based. The Air Force Field Project Officer shall attach a letter of transmittal to the contractor's final detailed claim setting forth comments and recommendations to the contracting officer.

d. In the event of the non-realization of the basic assumption resulting in standby time while on location, in determining an equitable adjustment of the contract price, the Government shall allow only the additional direct costs incurred plus a fair and reasonable allowance for General and Administrative Costs.

e. In the event of the non-realization of the basic assumption resulting in standby time in the Producer's Studio, in determining an equitable adjustment of the contract price, the Government shall allow only the additional direct costs incurred plus a fair and reasonable allowance for Overhead and General and Administrative Costs.

f. The parties agree to negotiate in good faith concerning any claims under this article as to the amount and terms of any equitable adjustment which should be made. If the parties fail to agree whether an equitable adjustment is required under this article, or upon the terms or amount of such adjustment, the dispute shall be disposed of as a question of fact in accordance with Article 1 of the General Provisions entitled, "Disputes."

g. Nothing provided in this Article shall excuse the contractor from proceeding with the contract in accordance with its terms and conditions.

h. Nothing provided in this Article is intended to alter, restrict or limit the terms of Article 2 (Changes) of the General Provisions or the authority of the contracting officer thereunder.

i. Warranty—The contractor represents and warrants that there is not included in the fixed price hereunder any charge, allowance, or reserve for the possible non-realization, in whole or in part, of the basic assumption.

j. Any adjustment hereunder shall be evidenced by a Supplemental Agreement to this contract, between the parties.

(k) *Ceiling price provision.* It may be observed from the chart in § 1003.401 of this chapter that certain price redetermination contracts do not provide mandatory ceilings on price, but may provide for unlimited upward and downward adjustment. These types are FPR–A, FPR–B, and FPR–F, also FPR–D after the initial repricing.

17. Sections 1003.403–4 through 1003.403–11 are deleted and the following substituted therefor:

§ 1003.403–4 *Fixed price provision.*—(a) *Applicability.* Fixed-price incentive contracts are appropriate for use primarily in those procurements involving substantial opportunity for cost reduction in quantity production over an extended period of contract performance, but they are not intended to supplant or preclude the use of the fixed-price contracts providing for the redetermination of price, as set forth in § 3.403–3 of this title and § 1003.403–3, when sound and properly spaced prospective pricing can adequately encourage cost reductions, and proper use of the latter will result in a lower price.

(b) *Limitations.* This type of contract is authorized for use only by Hq AMC, AMC field procurement activities, and ARDC. The finding and determination required to support the use of fixed-price-incentive contracts will be made according to the requirements of § 1003.303. Incentive price revision clauses set forth in (d) and (e) of this section may be used in negotiated fixed-price contracts as provided in § 3.403–4 of this title and under the circumstances outlined below.

(1) The incentive contract will not be used as a substitute for firm fixed-price contracting but may be used to encourage efficiency and at the same time provide some degree of protection to both contracting parties where, for some reason, a firm fixed-price contract is not feasible.

(2) Target prices should be free of contingencies beyond those of a predictable nature.

(3) Neither of these clauses should be used unless target prices can be estimated with sufficient accuracy to assure a realistic target and profit formula.

(4) The general conditions for use set forth in § 1003.403–3 (b) and limitations on use in § 1003.403–3 (c) must be satisfied substituting "fixed-price incentive" for "price redetermination" therein.

(c) *Instructions.* (1) The clauses set forth in paragraphs (d) and (e) of this section provide for an incentive price revision of the unit price(s) and the total price set forth in the contract. The items which are subject to incentive price revision will be indicated in the appropriate blanks under paragraph (2) of the clauses. The items which are not subject to incentive price revision and which will be paid on a fixed-price basis will also be indicated in the appropriate blanks of the last sentence of paragraph (2).

(2) If there is sufficient and pertinent cost and production experience to establish fair and reasonable target prices at the time the contract is negotiated, the clause set forth in paragraph (d) of this section, will be used and the prices originally negotiated and set forth in the contract will be target prices.

(3) The clause set forth in paragraph (e) of this section should be used only if fair and reasonable target prices cannot be established at the time the contract is negotiated because of a lack of sufficient and pertinent cost or production experience but can be negotiated early in the performance of the contract and after production of a reasonable quantity, and the prices originally negotiated and set forth in the contract will be billing prices only. This clause provides for the submission of data upon which to base the negotiation of target prices, target profit, and profit-and-price adjustment formula after delivery or shop completion of a designated number of articles, which should be at an early date during the course of performance under the contract. The results of such negotiations will be evidenced by a supplemental agreement which will use the format of paragraph (7) (iii) of the clause set forth in paragraph (d) of this section with respect to the profit formula. Where the Government has previously ordered articles of a type similar to those subject to incentive price revision but the Government and the contractor do not have adequate cost or production experience upon which to negotiate target prices at the time the new contract is negotiated, the time for negotiation of target prices and submission of the data will be premised on the delivery of a designated number of the articles to be delivered under the previous production contract. This designated number will be established in a manner that will permit early repricing and reasonable risk on the undelivered portion of the new contract.

(4) The incentive formula establishing the percentage for target profit, participating share, and ceiling both on price and profit, will in every case be negotiated and established in the contract upon negotiation of the firm target price. The maximum or ceiling price should be as low as possible under the circumstances, affording no protection to the contractor against extravagance and inefficiency. Profit ceilings will normally be specified as a percentage of target costs. Numerous combinations of target profit percentages, percentages of ceiling price above target price, and varying "share" arrangements may be negotiated, depending on the circumstances. The sharing arrangements may be varied at different levels of cost, as costs become more difficult to control and reduce. The contracting officer can tailor these variables to suit the specific procurement.

(5) Paragraph (6) of the clause set forth in paragraph (i) of § 1003.403–3 or paragraph (8) of the clause set forth in paragraph (e) of this section entitled "Items Priced Pursuant to Established Provisioning Procedures" will recite the applicable authorized provisioning documents. It is preferable to require segregation of costs between the end items and provisioned items, such as spare parts, special tools, and ground handling equipment. Under unusual circumstances, however, such segregation may be waived.

(6) The prices of items of articles or services added by contract modification, if otherwise meeting the criteria for initially firm target prices, will ordinarily be target prices. Billing prices may, however, be negotiated when in the opinion of the contracting officer sufficient information is not available on which to negotiate reasonable target prices, in which event the amendment or supplemental agreement will provide a definite time early in performance, for conversion of such billing prices to target prices. In either case, the target price when established will indicate the target cost and profit included therein, and the contract target costs will be adjusted to reflect the cumulative effect thereof at the time of final price revision. Where articles or services so added are priced on a fixed-price basis, they will be paid accordingly, and the elements of cost and profit involved will be excluded from the costs and profits considered in final price revision. Fixed-price items will only be added when the costs thereof can and will be segregated from all other contract costs.

(7) Prices established for contract changes on items subject to incentive pricing will be target prices, indicating the target cost and profit included therein. Ceiling prices may be adjusted only for significant changes in required work. The contract target cost will at the time of final price revision be adjusted to reflect the net effect of increases and decreases in target cost resulting from such changes. However, under the clause in paragraph (e) of this section, the target prices of any changes on items subject to incentive pricing directed prior to the establishment of the contract target price may be established at the time of negotiation of the contract target price.

(8) In the event the contract is terminated the paragraphs of the clause provide for settlement according to the appropriate termination clause of the contract, except that in the event of an entire termination, prices for completed articles will be the subject of negotiation

and in the event of a partial termination, the provisions of the clause will be revised as may be equitable under the circumstances. Such revisions should include, if the termination is partial, an adjustment of target costs, target profits, ceiling, and other provisions if affected by the fact that deliveries are made during a different period and the unit cost may change due to the change in volume production.

(9) The paragraph entitled "Adjustment of Billing Price" makes it possible to negotiate the adjustment of prices at which the articles delivered are being billed under invoices submitted by the contractor either upward or downward as production progresses under the contract. If it appears at any time that the final unit price or final contract price will be substantially less than the billing or target price, the contracting officer will promptly negotiate to adjust downward the price at which those articles are being billed. In like manner, if it appears at any time that the final unit price or final contract price will be substantially greater than the billing price or target price prompt action shall be taken to increase the price at which articles are being billed. Any such change in billing price will not affect either ceiling or target price or the formula.

(10) A copy (or copies) of the statement of cost submitted by the contractor will be referred to the cognizant audit agency. To assist the contracting officer in pricing, the cognizant audit agency will furnish such reports as may be requested by the contracting officer. In this connection, the audit agency may submit such other advisory reports or comments deemed appropriate with respect to such statements of cost.

(d) *Fixed-price-incentive clause (FPIF) with initially firm target.*

FIXED-PRICE-INCENTIVE CLAUSE

(1) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(a) The term "billing price" means the stated prices which the contractor may receive upon delivery of any article or completion of services pending final price revision.

(b) The term "target price" means any price that is subject to adjustment in accordance with the final price revision provisions of these price revision clauses.

(c) The term "target cost" means that portion of any target prices which, at the time of negotiation thereof, was deemed to be the estimated cost of the articles or services being procured and which will be used as a basis for determining the amount of profit the contractor will realize at the time of establishing the final contract price.

(d) The term "target profit" means that portion of any target price agreed upon as being a reasonable profit for furnishing any item of articles or services if such item were produced for a cost equal to the target cost.

(e) The term "contract target price" means the sum of the target prices of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(f) The term "contract target cost" means the sum of the target costs of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(g) The term "contract target profit" means the sum of the target profits of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(h) The term "adjusted total contract cost" means the total cost, determined in accordance with paragraph (7) (i) of this clause, for only those items subject to final price revision in accordance with the provisions of this clause.

(i) The term "final contract price" means the final contract price for only those items subject to final price revision in accordance with the provisions of this clause.

(2) *General.* The prices of Items _____ under this contract are target prices until revised in accordance with the provisions of this clause and including a target profit of _____ percentage of target cost. The prices of Items _____ are fixed and not subject to revisions in accordance with any of the provisions of this clause.

(3) *Submission of data.* Within _____ days after the end of the month in which the contractor has delivered the last unit referred to in Items _____ of this contract, the contractor shall forward to the contracting officer:

(i) a statement of all costs itemized so far as practical in manner prescribed by DD Form 784, incurred by the contractor in performing all work under the items of this contract subject to price revision, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under such items. The contractor may include as a separate item in the statement of costs to be submitted hereunder, an amount to be agreed upon by the contractor and the contracting officer representing the difference between (i) the cost of materials, supplies, and subassemblies purchased for but not allocated to the performance of the contract by the contractor which may be reasonably expected to remain on hand or which are on hand as surplus materials to the conclusion of the contract, and (ii) the value of such materials, supplies and subassemblies to the conclusion of the contract. The Government may make such examination of the Contractor's accounts, records, books and related data as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(4) *Accounting procedures.* The contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract, in accordance with generally accepted accounting principles and practices, and to the extent and in such detail as is necessary for establishment of costs applicable to the items of this contract subject to price revision. The contractor shall segregate the costs of any item, change or service, the price of which is fixed and not subject to revision in accordance with the provisions of this clause.

(5) *Certification.* An officer or other responsible official of the contractor authorized by it to do so, shall certify on each statement of costs forwarded to the contracting officer in accordance with the requirements of this clause, that the incurred costs are based upon the accounting records of the contractor, that such records have been kept in accordance with generally accepted accounting principles and practices normally followed by the contractor, that such incurred costs are correct to the best of his knowledge and belief and that the estimate of costs to complete is considered reasonable.

(6) *Items priced pursuant to established provisioning procedures.* (i) Item _____, spare parts: The unit prices of spare parts shall exclude (include) the estimated cost of engineering and tooling and shall be determined in accordance with _____, which document is incorporated herein by reference. The contractor shall furnish with priced spare parts order a detailed statement of the method used in pricing such order and separate cost breakdowns of a representative number of major parts included in the order. The aggregate target price for such spare parts shall be established by negotiation on the basis of information submitted in accordance with this subparagraph. Spare parts unit prices, as so established, need not be recalculated for the purposes of this clause, however, the aggregate target price for spare parts Item _____, shall be subject to revision in accordance with the provisions of this clause. As target prices are established pursuant to this paragraph, they shall be added to the contract by amendment which shall indicate the effect on the contract target price, target profit and ceiling.

(Other items)

(ii) Item _____

(Any special provisions applicable)

(7) *Final price revision.* Upon submission of the information required by paragraph (3) above, the contractor and the contracting officer shall promptly establish a final contract price for the items subject to revision in accordance with the provisions of this clause in the following manner:

(i) On the basis of the information required by paragraph (3) above, together with the results of such other investigation, as the contracting officer may deem appropriate, there shall be established by negotiation the adjusted total contract cost, excluding the actual cost incurred to date of any item or service that has been established on a fixed-price basis and the estimated completion cost thereof. Failure to agree, shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(ii) The final contract price of such items shall be established by adding to the adjusted total contract cost, as negotiated under paragraph (i) above, an allowance for profit determined in accordance with the instructions set forth in paragraph (iii) below; provided, however, that in no event shall the final contract price exceed _____ percent of the contract target cost.

(iii) The allowance for profit with respect to such items shall be determined by adding to or deducting from the contract target profit an amount to be determined in accordance with the following schedule; provided, however, that in no event shall the final contract profit exceed _____ percent of the contract target cost:

When the adjusted total contract cost is—	*The allowance for final contract profit is—*
Equal to the contract target cost.	Contract target profit.
Greater than contract target cost.	Contract target profit less __ percent of the amount by which the adjusted total contract costs exceeds the contract target cost.
Less than the contract target cost.	Contract target profit plus __ percent of the amount by which the adjusted total contract cost is less than in contract target cost.

(8) *Adjustment of payments.* If the final contract price, as determined under paragraph (7) of this clause, is greater than the aggregate of billing prices for items subject to price revision, as such billing prices may have been revised from time to time, and provided the contractor has met the other requirements of this contract, the contractor shall promptly be paid the amount of such excess. If such final contract price is less than the aggregate of such billing prices, provisions shall be made for prompt reimbursement by the contractor to the Government of the amount of the deficiency. The total amount so payable and the method of payment shall be set forth in an amendment to the contract.

(9) *Termination.* In the event this contract is terminated, in whole or in part,

settlement shall be made in accordance with the provisions of the clause hereof entitled "Termination for the Convenience of the Government" or the provisions of the clause hereof entitled "Default," whichever is applicable, subject to the following:

(i) If this contract is terminated in its entirety at any time prior to agreement upon revised prices hereunder, the contractor and the contracting officer shall, if the termination settlement is to be negotiated on an inventory basis, negotiate to establish such prices for completed articles and services, the price of which was subject to revision hereunder, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute."

(ii) If this contract is partially terminated the contractor and the contracting officer shall agree upon such revisions in the provisions of this clause, including target price, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(10) *Adjustment of billing price.* If at any time it appears that the final unit price will be substantially greater or less than the unit prices at which units under this contract are being billed, this contract may be amended to adjust such unit billing prices. The establishment of adjusted prices for billing purposes only shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(11) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) until final price revision has been made shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of the established target profit allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established—increased or decreased in accordance with the incentive profit formula of this contract when the amount of costs stated in item (2), above, differs from the applicable target costs. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954 shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof.

(e) *Fixed-price-incentive clause (FPIR) with delayed firm target.*

FIXED-PRICE-INCENTIVE CLAUSE

(1) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(a) The term "billing price" means the stated prices which the contractor may receive upon delivery of any articles or completion of services pending final price revision.

(b) The term "target price" means any price that is subject to adjustment in accordance with the final price revision provisions of these price revision clauses.

(c) The term "target cost" means that portion of any target price which, at the time of negotiation thereof, was deemed to be the estimated cost of the articles or services being procured and which will be used as a basis for determining the amount of profit the contractor will realize at the time of establishing the final contract price.

(d) The term "target profit" means that portion of any target price agreed upon as being a reasonable profit for furnishing any item of articles or services if such item were produced for a cost equal to the target cost.

(e) The term "contract target price" means the sum of the target prices of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(f) The term "contract target cost" means the sum of the target costs of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(g) The term "contract target profit" means the sum of the target profits of articles and services being procured under the terms of the contract and under change orders and amendments thereto.

(h) The term "adjusted total contract cost" means the total cost, determined in accordance with paragraph (9) (i) of this clause, for only those items subject to final price revision in accordance with the provisions of this clause.

(i) The term "final contract price" means the final contract price for only those items subject to final price revision in accordance with the provisions of this clause.

(2) *General.* The prices of Items _____ under this contract are billing prices revised in accordance with the provisions of this clause. The prices of Items _____ are fixed-prices and not subject to revision in accordance with any of the provisions of this clause.

(3) *Submission of data for establishment of target price and incentive formula.* Within _____ days after the end of the month in which the _____ unit (to be manufactured hereunder) or (to be manufactured under contract _____) is (delivered) (shop complete), or at such other time as the contracting officer may direct, the contractor shall forward to the contracting officer (i) a statement of all costs, itemized so far as is practical in the manner prescribed by DD Form 784 incurred to the date of such (delivery) (shop completion) or such other time as directed by the contracting officer under this contract (and under the above Contract _____), (ii) an estimate of costs to be incurred by the contractor to complete performance of all work and obligations under items subject to price revision and (iii) data to support the accuracy and reliability of such estimate.

(4) *Submission of data for final price revision.* Within _____ days after the end of the month in which the contractor has delivered the last unit referred to in Item(s) _____ of this contract, the contractor shall forward to the contracting officer in such form as the contracting officer may reasonably require (i) a statement of all costs itemized so far as is practical in the manner prescribed by DD Form 784 incurred by the contractor in performing all work under the items of this contract subject to price revision, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under such items. The contractor may include as a separate item in the statement of costs to be submitted hereunder, an amount to be agreed upon by the contractor and the contracting officer representing the difference between (i) and the cost of materials, supplies, and subassemblies purchased for but not allocated to the performance of the contract by the contractor which may be reasonably expected to remain on hand or which are on hand as surplus materials to the conclusion of the contract, and (ii) the value of such materials, supplies and subassemblies to the conclusion of the contract. The Government may make such examination of the Contractor's accounts, records, books and related data as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(5) *Accounting procedures.* The contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract, in accordance with generally accepted accounting principles and practices to the extent and in such detail as is necessary for the establishment of costs applicable to the items of this contract subject to price revision. The contractor shall segregate the costs of any item, change or service, the price of which is fixed and not subject to revision in accordance with the provisions of this clause.

(6) *Certification.* An officer or other responsible official of the contractor authorized by it to do so, shall certify on each statement of costs forwarded to the contracting officer in accordance with the requirements of this clause, that the incurred costs are based upon the accounting records of the contractor, that such records have been kept in accordance with generally accepted accounting principles and practices normally followed by the contractor, that such incurred costs are correct to the best of his knowledge and belief and that the estimate of costs to complete is considered reasonable.

(7) *Establishment of target price and incentive formula.* Items _____. Upon submission of the information required by paragraph (3) above, the contractor and the contracting officer shall promptly negotiate and amend the contract to establish the target costs, target profits, target prices, profit and price adjustment formula, and price and profit ceilings. The target prices of such items shall constitute the revised billing prices. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(8) *Items priced pursuant to established provisioning procedures.* (i) Item _____ *spare parts.* The unit prices of spare parts shall exclude (include) the estimated cost of engineering and tooling and shall be determined in accordance with _____, which document is incorporated herein by reference. The contractor shall furnish with the priced spare parts order a detailed statement of the method used in pricing such order and

separate cost breakdowns of a representative number of major parts included in the order. If any priced spare parts order is received by the contracting officer from the contractor prior to establishment of the target prices of Item _____, the aggregate billing prices for spare parts set forth therein shall be established by negotiation. Spare parts billing unit prices as so established, need not be recalculated for the purpose of this clause; however, the aggregate target price for spare parts Item _____ shall be subject to revision in accordance with the provisions of this clause. In the event that billing prices for such spare parts orders have been so established prior to the establishment of the target prices, the aggregate target prices for spare parts under such order or orders shall be established by negotiation at the same time and in the same manner as for Items _____. Spare parts unit prices as so established, need not be recalculated for the purposes of this clause; however, the aggregate target price for spare parts Item _____ shall be subject to revision in accordance with the provisions of this clause. If any priced spare parts order is received by the contracting officer from the contractor subsequent to the establishment of the target prices of Items _____, the target prices for spare parts thereunder shall be similarly established by negotiation. The target prices established pursuant to this paragraph shall be added to the contract by amendment which shall indicate the effect on the contract target price, target profit, and ceiling.

(Other items)

(ii) Item _____

(Any special provisions applicable)

(9) *Final price revision.* Upon submission of the information required by paragraph (4) above, the contractor and the contracting officer shall promptly establish a final contract price for the items subject to revision in accordance with the provisions of this clause in the following manner: (i) on the basis of the information required by paragraph (4) above, together with the results of such other investigation, as the contracting officer may deem appropriate, there shall be established by negotiation the adjusted total contract cost, excluding the actual cost incurred to date of any item or service that has been established on a fixed-price basis and the estimated completion cost thereof. Failure to agree shall constitute a question of fact within the meaning of the clause of this contract entitled "Disputes." (ii) The final contract price of such items shall be established by adding to the adjusted total contract cost, as negotiated under paragraph (i) above, an allowance for profit determined in accordance with the profit-and-price adjustment formula negotiated in accordance with paragraph (7) of this clause, such price to be subject to any negotiated ceilings on total price and on profit.

(10) *Adjustment of payments.* If the final contract price, as determined under paragraph (9) of this clause, is greater than the aggregate of billing prices for items subject to price revisions, as such billing prices may have been revised from time to time, and provided the contractor has met the other requirements of this contract, the contractor shall promptly be paid the amount of such excess. If such final contract price is less than the aggregate of such billing prices, provisions shall be made for prompt reimbursement by the contractor to the Government of the amount of the deficiency. The total amount so payable and the method of payment shall be set forth in an amendment to the contract.

(11) *Termination.* In the event this contract is terminated, in whole or in part, settlement shall be made in accordance with the provisions of the clause hereof entitled "Termination for the Convenience of the Government" or the provisions of the clause hereof entitled "Default," whichever is applicable, subject to the following: (i) if this contract is terminated in its entirety at any time prior to agreement upon revised prices hereunder, the contractor and the contracting officer shall, if termination settlement is to be negotiated on an inventory basis, negotiate to establish such prices for completed articles or services, the price of which was subject to revision hereunder, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." (ii) If this contract is partially terminated the contractor and the contracting officer shall agree upon such revisions in the provisions of this clause, including target prices, as may be equitable under the circumstances. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(12) *Adjustment of billing price.* If at any time it appears that the final unit prices will be substantially greater or less than the unit prices at which units under this contract are being billed, this contract may be amended to adjust such unit billing prices. The establishment of adjusted prices for billing purposes only shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(13) Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) until final price revision has been made shall exceed the sum of the following items as reported by the contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amounts of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of the established target profit allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established—increased or decreased in accordance with the incentive profit formula of this contract when the amount of costs stated in item (2), above, differs from applicable target costs. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess less any applicable tax credit under section 1481 of the Internal Revenue Code of 1954 shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof.

18. Sections 1003.404, 1003.404–2, and 1003.404–3 are deleted and the following substituted therefor:

§ 1003.404 *Cost reimbursement type contract*—(a) *Description.* A basic feature of cost-reimbursement type contracts is that little or no risk or incentive is placed on the contractor to control the amount of allowable costs incurred in performance of the contract. The main risk a contractor faces is the possibility of cost disallowances in current audit by cognizant service audit agency, or in post audit by the General Accounting Office. However, experience considerably minimizes this possibility. Actual "after-the-fact" allowable costs are reimbursed except when provisional or negotiated overhead rates are used as provided in Subpart G, Part 3 of this title, and Subpart G of this part.

(b) *Applicability*—(1) Before this type of contract is employed, the reliability and integrity of the contractor should be ascertained. This is of particular importance because of the reimbursement features of this contract whereby the contractor in effect receives payment for costs incurred prior to acceptance of product.

(2) A contractor's accounting system should be adequate to substantiate the allowability of the requested reimbursement. This requirement is often not clearly understood, especially in the case of new contractors undertaking work on this basis for the first time. It is essential therefore to reach full accord on this subject prior to performance, otherwise misunderstandings and corresponding delays in payment may result.

(3) Mixed plant operations (i e., concurrent fixed-price and cost reimbursable work) should be avoided because they complicate both Government and contractor administration, particularly (but not limited to) segregation of inventories.

(4) In considering the use of a cost-reimbursement type contract it is important to keep in mind the following:

(i) Cost-reimbursement type contracts usually require much more administrative effort than any other alternative types of contracts.

(ii) They do, however, permit a high degree of Government supervision of contractor's cost and performance.

(iii) This contract requires approval of invoices by the administrative contracting officer which usually involves Government audit. Direct allowable costs and the proportionate part of fee, when applicable, are paid currently as approved and may be audited currently or on a post audit basis. Overhead costs normally are approximated and paid currently, but are subject to adjustment upon an after-the-fact negotiation of overhead rates. (see Subpart G, Part 3 of this title and Subpart G of this part) or an audit by both the cognizant service

audit agency and the general Accounting Office.

(iv) The contracts require extensive property accountability administration. (See Part 1013 of this chapter and Part 13 of this title.) Under this type of contract, the Government takes title to special tooling, raw material, work in process, and finished goods inventories upon reimbursement to the contractor. Under fixed-price types of contracts (including redeterminable and incentive), the contractor normally retains title until such time as the item is delivered and accepted. This distinguishing characteristic of the cost-reimbursement type contract intensifies administrative cost accounting and property accountability problems.

(v) Subcontracts require approval according to the terms of the contract. (See Subpart B, Part 1054 of this chapter.)

(c) *Limitations.* Finding and determinations required to support the use of cost-reimbursement type contracts will be made according to the requirements of § 1003.303.

§ 1003.404–1 *Cost contract (CR)*—(a) *Limitations.* This type of contract is authorized for use by Hq AMC, AMC field procurement activities, ATC, ARDC, and the AF Academy Construction Agency. Other procuring activities are not authorized to use this type of contract.

§ 1003.404–2 *Cost-sharing contract (CS)*—(a) *Limitations.* This type of contract is authorized for use by Hq AMC, AMC field procurement activities, ATC, ARDC, and the AF Academy Construction Agency. Other procuring activities are not authorized to use this type of contract.

§ 1003.404–3 *Cost-plus-a-fixed-fee contract (CPFF)*—(a) *Description.* (1) In the cost-plus-a-fixed-fee contract, the fee represents management's reward or profit for undertaking or accomplishing the work called for by the contract. In practice this fee is related to the initial quotation or negotiated estimated cost. There is no guarantee that the work can or will be accomplished within the initially estimated cost.

(2) If at any time the contractor has reason to believe that the costs which he expects to incur in the performance of the contract in the next succeeding 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost, or if at any time the contractor has reason to believe that the total cost to the Government, exclusive of fixed fee will be substantially greater or less than the estimated cost, he is obliged to advise the contracting officer giving a revised estimate for performance of the contract. In event additional funds are necessary to complete the work the Government may decide upon review of the status of the work to: (i) add the additional money or (ii) terminate the contract.

(3) The fixed fee is not considered to be a very strong incentive to control cost. However, there is some incentive in the fact that overrun of cost will result in a lower percentage return on actual incurred costs. The converse of course is also true. A more apparent incentive may be achieved by incorporating the incentive formula in a CPFF contract but this assumes an ability to arrive at more realistic estimates than under the straight CPFF contract. (See § 1003.-404–4.)

(4) Unrealistic estimating on the part of the contracting officer whether on the high or low side not only complicates contract fundings but may result in unrealistic and unreasonable fee payments.

(b) *Applicability.* The dollar amount of procurement should be substantial enough to warrant the administrative costs involved. As example, this type of contract will rarely be employed in procurements amounting to less than $100,-000 unless all work undertaken in the particular plant is under a CPFF basis.

(c) *Limitations.* (1) This type of contract is authorized for use by Hq AMC, AMC field procurement activities, ATC, ARDC, and the AF Academy Construction Agency, AMFPA, and AMFEA are allowed this type of contract for limited use. Other procuring activities are not authorized to use this type of contract.

(2) In no case will the fixed fee exceed the percentages of estimated cost authorized by section 4 (b) of 10 U. S. C. 23066 (d), and only in most unusual circumstances (usually those involving an outstanding contribution to the defense effort (see § 3.808–4 of this title) in relation to estimated cost) will authority be granted to exceed the percentages set forth in § 3.404–3 (c) of this title. To obtain the approval of the Secretary to exceed the prescribed percentages for a fixed fee, the initiating agency will forward a request containing a full statement of facts and recommendations through the Director of Procurement and Production, Hq AMC, attn: MCPC, to the Director of Procurement and Production, Hq USAF. The request will contain information pertaining to the type of procurement (research or development, production, architectural or engineering, etc.) need for the supplies or services, estimated total costs, percentage of fixed fee proposed, and all other pertinent information.

(3) For contracts placed by AMC field procurement activities and Hq AMC, fees within the prescribed limits may be approved by those officials who have been authorized to make findings and determinations to support the use of this type of contract.

(4) While this type of contract often simplifies contract financing by means of its periodic reimbursement of allowable costs and fee, it should not be used to circumvent limitations on progress payments under fixed price type contracts. (See Part 1058 of this chapter.)

§ 1003.404–4 *Cost-plus-incentive-fee contract (CPIF)*—(a) *Applicability.* This type of contract may be appropriate for use when the procurement of supplies involves a reasonably long production run, and the contract is being let at a time when there is an expectation that there will be a substantial amount of development work.

(b) *Limitations.* (1) This type of contract is authorized for use by Hq AMC, AMC field procurement activities, and ARDC but only for procurement of items in production quantities. Other procuring activities are not authorized to use this type of contract.

(2) In no case will either the target or the maximum fee exceed the percentages of estimated cost authorized by section 4 (b) of 10 U. S. C. 2306 (d), and only in the most unusual circumstances (usually those involving an outstanding contribution to the Defense effort (see § 3.808–4 of this title) in relation to the target cost) will authority be granted to exceed the percentages set forth in § 3.404–3 (c) of this title. To obtain the approval of the Secretary to exceed the prescribed percentages for either the target or the maximum fee, the initiating agency will forward a request containing a full statement of facts and recommendations through the Director of Procurement and Production, Hq AMC attn: MCPC, to the Director of Procurement and Production, Hq USAF. The request will contain information pertaining to the type of procurement (research or development, production, architectural or engineering, etc.), need for the supplies or services, estimated total cost, percentage of target and maximum fee proposed, and all other pertinent information.

(3) For contracts placed by Hq AMC and AMC field procurement activities, maximum incentive fees within the prescribed administrative limitations (§ 3.404–3 (c) of this title) may be approved by those officials who have been authorized to make findings and determinations to support the use of this type of contract.

(4) This incentive revision of fee clause should be used only when the target is realistic and contains no significant amount of contingencies. Estimated target costs should be reasonably close under the circumstances. Inflated or unrealistically low estimates may enhance or impair the incentive fee provision of the contract without relation to economy in performance.

(5) Normally the decision to use this type of contract will not be made until negotiations have progressed to a point where the contracting officer can determine that its use is feasible. If a determinations and findings to use a CPFF contract has been made prior to the decision to incorporate an incentive revision of fee clause, a second determinations and findings covering the incentive factor must be made.

(6) Work added or deleted from contract. The estimated costs and fees that are agreed upon for work that is added or deleted by each change order or supplemental agreement will be the target costs and target fees for such work. The target fees agreed upon for such work should usually be a fee arrived at by applying the same percentage factor used in arriving at the target fee for the basic articles or services being procured. The final contract fee (including the final fee for all such work) is then determined by applying the incentive pattern to the difference between the total actual cost that is incurred by the contractor for all work under the contract with the sum of the target costs for all work. It is essential, therefore, that target costs that are

agreed upon for work under contract modifications should be realistic and should contain no significant amount of contingencies.

(c) *Cost - plus - incentive - fee clause* (CPIF).

COST-PLUS-INCENTIVE-FEE CLAUSE (CPIF)

(1) *General.* In order to foster economy by providing a tangible reward therefor, it is agreed that the fee established in the schedule shall be subject to adjustment in accordance with the provisions of this clause. The following definitions apply:

"Target cost" means the negotiated estimated cost of each item under this contract, as amended.

"Target fee" means the negotiated fee for each item under this contract, as amended, assuming such item were produced for a cost equal to the target cost.

(2) *Target and tentative target items.* The estimated cost and fee set forth opposite items (Note 1) are the target cost and target fee for each item. The estimated cost and fee set forth opposite items (Note 2) represent only an allocation of funds to be utilized to establish the target cost and target fee for such items by negotiation in accordance with established provisioning procedures or as otherwise set forth elsewhere in the contract, which negotiations shall be evidenced by a supplemental agreement hereto.

(3) *Submission of data.* Within 90 days after the end of the month in which the last unit referred to in item (Note 3) of this contract is delivered, or at such later date as may be approved by the contracting officer, the contractor shall forward to the contracting officer (i) a detailed statement of all reimbursable costs determined in accordance with the terms of this contract to such time, and (ii) a detailed estimate of reimbursable costs of such further performance, if any, as may be necessary to complete performance of all work and obligations under this contract. This statement and estimate shall be prepared in such form that, to the extent possible, they will disclose the approximate unit cost by cost elements of the various items on contract.

(4) *Final determination of fee.* Upon submission of the information required by paragraph (3) above, the contractor and the contracting officer shall negotiate promptly to establish the final contract fee as follows:

(i) The parties shall agree to a total contract cost to be utilized in determination of the final fee by adding to the reimbursable costs in paragraph (3) (i) above, the estimated cost, if any, in paragraph (3) (ii) determined, by negotiation by the parties, to be necessary for completion of performance in this contract.

(ii) The final fee for the performance of this contract shall be the aggregate of all target fees increased or decreased as follows:

The said sum shall be increased by (Note 4) cents for every dollar by which the total contract cost as determined in (4) (i) is less than the sum of the target costs; and the said sum shall be reduced by (Note 4) cents for every dollar by which the total contract cost as determined in (4) (i) exceeds the sum of the target costs. In no event shall the final fee be greater than (Note 5) percent nor less than (Note 5) percent of the sum of the target costs.

(5) *Finalization.* The final contract fee shall be evidenced by a supplemental agreement hereto. Upon execution of such supplemental agreement, contractor shall promptly reimburse the Government for excess fee payments theretofore made, if any; or the Government shall pay to the contractor the balance of fee due him, if any, subject to the release provisions of the contract.

NOTE 1: Insert items for which target costs and target fees have been negotiated.

NOTE 2: Insert items, such as spare parts, for which target costs and target fees will be negotiated after the contract is executed.

NOTE 3: Insert item number of some major contract items (usually item 1—the basic articles).

NOTE 4: Insert the contractor's participation, both blanks should normally contain the same figure. Under some circumstances, it may be appropriate to use a sliding scale; for example, 0.01 cent for the first $100 of increased or decreased cost, 0.02 for the second $100, etc. Under such a philosophy the participation factor will be on an increasing scale for each increment, never on a decreasing scale, and the paragraph will necessarily have to be tailored to fit the negotiations.

NOTE 5: Insert the "ceiling" and "floor" on fee. The target fee and ceiling percentages are subject to § 3.404–3 (c) of this title. The floor and ceiling should normally be equidistant from the target percentage of fee.

19. Sections 1003.405, 1003.405–2, and 1003.405–3 are deleted and the following substituted therefor:

§ 1003.405 *Other types of contracts.*

§ 1003.405–1 *Time and materials contract (T–M).* (a) *Applicability.* It is also essential that this type of contract be used only where the provisions for adequate control include adequate descriptions of the direct labor categories which are to be subject to reimbursement and the provision for appropriate surveillance includes reasonable assurance that there will be no use of less competent grades of labor than anticipated.

(b) *Limitations.* (1) The use of this type of contract is discouraged except under the most pertinent circumstances and the findings and determinations required by § 3.405–1 (c) of this title will include a clear statement of these circumstances as well as a specific reference to the documentation required by § 1003.402.

(2) It is a definite requirement of time and materials type contracts that the agreement reached regarding the points, itemized in (i) through (x) below, be specifically spelled out in the schedule of the contract, in order that the contract may be properly administered. The contract terms and provisions require careful negotiation. It is essential that during the negotiation of time and materials type contracts the contractor and the contracting officer definitely agree on the basic features thereof, namely: (i) the hourly rates (consisting of direct labor, overhead, and profit), and (ii) direct material cost, and where applicable, other related rates specified for engineering and design, manufacturing and construction work, and other separate rates for overtime and doubletime. To satisfy the requirements of various prescribed contract clauses, such as the reference to the inclusion in the schedule of the contract of a definition of direct labor, the incorporation in the schedule of a reference to subpart B, part 15 of this title, relative to allowable direct materials cost, etc., there is included in the following paragraphs information as to their use to serve as a guide in the negotiation of time and materials type contracts, and preparation of the resultant contract.

(i) *Definite hourly rate.* A definite hourly rate (sometimes identified as the time rate) must be stated in all time and materials type contracts.

(ii) *Labor.* Only direct labor will be allowed as a basis for billing for labor and the types of labor or work to be included in the category of direct labor will be specified in the schedule of the contract. In drafting a definition of direct labor, it will be acceptable to include types of labor which the contractor has consistently classified as direct labor according to his regularly established accounting practice. However, the established practice of the Contractor will be defined with particularity, sufficient to classify all forseeable types of labor to be used on the contract as direct or indirect labor. Also the contract will specify that the time of non-productive personnel will not be included in direct labor. The following is a sample definition of direct labor, and unless exceptions are defined elsewhere in the contract, no costs will be allowed as direct labor unless they fall within the definition:

Direct Labor to be invoiced under this contract includes only the actual working time of any producing worker applied directly to the product (or service) called for herein. (Here insert any additional information concerning the inclusion of nonproductive time of producing workers, due to the fact that contractor has consistently classified same as direct labor in accordance with his regularly established practice). Producing workers include mechanics, machinists, welders, painters, masons, electricians, carpenters, and helpers (or other similar classifications approved in advance by the contracting officer). Nonproductive personnel will not be included in direct labor. Normally nonproductive personnel will be considered to include, but not necessarily be limited to, the time of partners, officers, supervisors, foreman, clerks, typists, timekeepers, material handlers, stockroom employees, tool crib attendants, cleaners, janitors, maintenance men, packers, watchmen, truck drivers, receiving and shipping employees, etc.

(iii) Separate hourly rates will be specified by labor category for engineering and design and manufacturing and construction work if applicable. Separate rates will also be specified for normal time and overtime work where overtime is necessary and properly authorized.

(iv) *Overhead.* Only overhead charges which may be incurred for the general benefit of the work to be performed will be considered for negotiation and inclusion in the hourly rate. In negotiating this overhead portion of the hourly rate particular attention will be given to overhead considerations set forth in Subpart H, Part 3 of this title and Subpart H of this part.

(v) *Profit.* The profit will be negotiated separately for each contract, the percentage anticipated will be indicated in the contractor's quotation but it will be incorporated in the contract as a portion of the definite hourly rate. See Subpart H, Part 3 of this title and Subpart H of this part for instructions relative to profit negotiations.

(vi) *Direct materials.* The contract will provide that direct materials (if their acquisition is necessary for the performance of the contract) will be reim-

bursable at cost according to ASPR XV. No profit will be allowed on material cost. The contract will specify the type of material that may be acquired in connection with the contract. For example, the contract may specify that direct material costs will only include purchased raw materials and fabricated parts entering directly into the product. Materials withdrawn from stores may be charged at cost under any recognized method of sound accounting practices regularly employed by the contractor.

(vii) *Overtime.* Overtime will be discouraged. In arriving at overtime rates (where absolutely necessary), it should be recognized that overhead actually incurred in an overtime period may vary considerably and often be less than that incurred in a normal time period. The major increased cost to a contractor in an overtime period is the overtime premium pay granted to employees. Overtime rates will therefore reflect the increased labor costs due to premium pay and only such increase in overhead as is expected to be actually experienced. Negotiated profit allowance for overtime hours will not exceed the dollars allowed in the straight-time hourly rate. To prevent excessive overtime or double time, a provision having substantially the effect of one of the following will be employed:

(*a*) The contractor (person or firm with whom the time and material or labor-hour is placed) should covenant that the amount of overtime and double time used on the work shall be fair and reasonable and shall be according to the exigencies of the particular job. (This will support any claims on account of excess overtime developed by an audit).

(*b*) The contractor should specify the maximum amount of overtime and double time, if any, which he anticipates will be required for the job, and should agree that this amount shall not be exceeded without the prior written approval of the contracting officer placing the order.

(*c*) The contractor should agree that no overtime or double time shall be used on the work without the prior written approval of the contracting officer placing the order.

(viii) *Subcontracting.* The contractor will not be permitted to derive any profit on account of subcontracting a portion of the work. Where subcontracting is contemplated or is to be permitted, it will be provided in the contract that the amount invoiced on account of such work will neither exceed the amount charged therefor by the subcontractor nor the rates for such work regularly agreed upon between the contractor and the subcontractor. To control the amount of subcontracting, provision may be made that the contractor will not subcontract any portion of the work in excess of a stated percentage, without the prior written approval of the contracting officer. Provision will be made that there will be no subcontracting by a vendor at an hourly rate which exceeds the contractor's hourly rate, without the prior written approval of the contracting officer.

(ix) *Excessive use of unskilled labor.* The contractor may be required to covenant that employees used on the work will be as efficient as the average for the class of labor employed by the contractor for the particular type of work.

(x) *Ceiling price.* When it is considered that the use of a ceiling price will be effective and practicable in reducing costs, a provision may be incorporated in such contracts to the effect that reimbursement will be made on a time and materials basis, but not in excess of a maximum dollar figure.

(3) This type of contract also requires verification and audit of contractor's invoices. Information regarding audit policy, procedures, and controls, which may be helpful in the consideration of effective administrative controls in particular cases, may be obtained from the cognizant auditor.

(4) Contractor's accounting system must be adequate for the determination of costs applicable to the materials portion of the contract and the hours expended in direct labor on the time portion of the contract.

(5) The determination that no other type of contract will suitably serve may be accomplished by the contracting officer placing the procurement if the total consideration is not in excess of $5,000. For contracts in excess of $5,000 the determination may be accomplished by the following, subject to the provisions of subdivision (v) of this subparagraph:

(i) Deputy Director/Procurement and Assistant Deputy Director/Procurement, Hq AMC.

(ii) Chiefs and deputy chiefs of buying divisions, Hq AMC.

(iii) Directors or deputy directors of procurement and production at the AMC field procurement activity concerned or staff officer responsible for procurement within AMFEA or AMFPA.

(iv) Contracts to be placed by all other AF procurement activities, including local purchase activities, require authorization of the commander of the major air command concerned (or a duly authorized representative not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command) provided contracts to be placed outside the United States, its Territories and possessions may also be authorized by air attaches, and chiefs of AF foreign missions as appropriate.

(v) The authority set forth above is subject to the following limitations:

(*a*) No person will exercise the authority if he is himself the contracting officer in the procurement involved.

(*b*) The officials who have been authorized will exercise such authority only within the jurisdictional limits of their respective duty assignments.

(6) Any change in the concept of the time and materials contract described herein will be considered a deviation within the meaning of § 1001.109 of this chapter. Time and materials contracts will be used only when proper provision for adequate controls, including close scrutiny by Government Personnel during performance, are established to give reasonable assurance that wasteful and extravagant methods are not being used.

§ 1003.405–2 *Labor-hour contract (L-H)*—(a) *Limitations.* Limitations on the use of time and materials contracts § 1003.405–1 (b) apply also to labor-hour contracts except that specific provision will be made that there will be no direct reimbursement for any materials used or consumed in the performance of the labor-hour contract.

§ 1003.405–3 *Letter contract (LC)*—(a) *Description.* The form of letter contracts to be used will be according to the format set forth in Subpart Y, Part 1007 of this chapter.

(b) *Applicability.* Letter contracts may be used only when the conditions set forth in § 3.405–3 (b) of this title exist. Letters of Intent are not authorized within the Air Force.

(c) *Limitations.* No letter contract may be issued prior to the execution of proper Determinations and Findings (see Subpart C, Part 3 of this title, and Subpart C of this part). The determination that no other type of contract will suitably serve will be accomplished by the officials listed in subparagraph (1) below.

(1) Subject to the limitations set forth in § 3.405–3 of this title and § 1003.405–3, the authority vested in the Director of Procurement and Production, Hq AMC, to issue letter contracts has been redelegated to:

(i) Chiefs of divisions of the Directorate of Procurement and Production, Hq AMC, without power of redelegation, for procurements where the total estimated costs are not anticipated to exceed $350,000. Further, the Chief, Industrial Resources Division, in connection with the provisioning of facilities in support of ICBM and IRBM programs is authorized to issue facilities letter contracts regardless of dollar amount, for critical facilities items and preconstruction planning and design, with power of redelegation to the Chief and Deputy Chief, Preparedness Branch.

(ii) Commanders of AMC field procurement activities, with power of redelegation only to directors of procurement and production, for procurements where the total estimated costs are not anticipated to exceed $350,000.

(iii) Chief, Electronics Defense System Division when the resulting definitive contracts are not originally anticipated to exceed $350,000. The authority may be redelegated to the Deputy Chief, Electronics Defense Systems Division.

(iv) Deputy Director/Ballistic Missiles, AMC irrespective of dollar amount. This authority may be redelegated to the Assistant Deputy Director/Ballistic Missiles, AMC.

(v) Commander, ARDC with respect to research and development procurements, irrespective of dollar amounts, with power of redelegation.

(vi) Commanders of oversea commands, air attaches, and chief of AF foreign mission, irrespective of dollar amounts. Oversea commanders may redelegate the authority not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command.

(vii) Commander, Air Materiel Force Pacific Area (AMFPA), irrespective of dollar amount, with power of redelegation to not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to AMFPA.

(viii) Commander, Air Materiel Force European Area (AMFEA), irrespective of dollar amount, with power of redelegation to not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to AMFEA.

(ix) Commander, Air Training Command, with power of redelegation to not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to Air Training Command. The exercise of this authority will be subject to obtaining prior authorization of the Office of the Procurement Committee, Hq AMC, according to the provisions of paragraph (e) of this section.

(2) If the total estimated costs of the procurement are anticipated to exceed the specific amounts in the delegations in paragraph (c) (1) above, or if a deviation from the standard forms set forth in Subpart Y, Part 1007 of this chapter, is required irrespective of dollar amount, prior authority must be obtained as required by subparagraph (4) below.

(3) All letter contracts, whether Army, Navy, or Air Force funds are involved, will be obligated for that amount which is estimated will cover the contractor's requirements for funds, but not to exceed limits placed by § 3.405–3 (c) (4) of this title until definitization is completed. If it becomes absolutely necessary to increase this obligation amount or to extend the expiration date by later amendment, the personal approval of the official designated in paragraphs (c) (1) (i) through (ix) above is required and will be sufficient without regard to amount involved. Under this policy the original administrative commitment document will not commit an amount in excess of the estimated obligation, and a commitment document will be required to obtain an increase in funds, if this is necessary prior to the time a definitive contract is accomplished. Although the total funds on MIPR's are carried as a commitment by the Army or Navy, the above partial obligation policy will be followed.

(4) Letter contracts which do not comply with the conditions and limitations set forth in subparagraph (2) of this paragraph and paragraph (d) (5) of this section will not be issued without prior authorization of the Office of the Procurement Committee (MCPC), Hq AMC, according to the procedures set forth in paragraph (e) of this section.

(d) *Content.* Each letter contract will be written according to Subpart Y, Part 1007 of this chapter, and will provide that the resulting definitive contract contain all required standard clauses in addition to such optional standard clauses necessary to protect fully the interest of the Government.

(1) Since letter contracts will not be issued for a period in excess of 180 days, § 3.405–3 (c), of this title, the date to be inserted in the last sentence of the clauses set forth in §§ 1007.2504–4, 1007.2505–4, and 1007.2506–4 of this chapter will in no event be a date later than 180 days from the date of the letter contract.

(2) *Progress payments under fixed-price supply or service letter contracts.* Contracting personnel will not offer progress payments under letter contracts. Requests for progress payments by contractors will be processed as required by Subpart F, Part 1054 of this chapter. When progress payments are properly authorized, the clause set forth in § 1054.606 of this chapter will be included in the letter contract. However, the clause (whether par. (b) thereof states 70 percent of cost or 85 percent of the direct labor and material costs) will be modified by including paragraph (i) reading as follows:

(i) In no event shall progress payments aggregating more than $_____ be made under this letter contract.

The figures to be inserted in the foregoing clause will be the dollar amount represented by 70 percent of the dollar amount obligated by the letter contract. Illustration: The total estimated cost of the procurement is $1,000,000; the amount of obligation by the letter contract is $400,000; the amount to be inserted in the additional paragraph (i) to the progress payments clause is $280,000. Exception: Progress payments at "75" or "90" percent to small business concerns who are prime contractors may be approved by the contracting officer when such progress payments meet the standards for customary progress payments to small business concerns as outlined in AFR 173–133.

(3) *Reimbursement under cost-reimbursement-type letter contracts.* Contracting personnel will not offer current reimbursement under cost-reimbursement-type-letter contracts. Current reimbursement under such letter contracts may be provided upon request by the contractor, provided such current reimbursement will be at a rate not exceeding 70 percent of the contractor's allowable cost (or 85 percent of the contractor's direct labor and material cost if desired). The exception in the previous paragraph in the case of small business concerns is also applicable hereto. In each such instance where current reimbursement is to be provided, a clause must be drafted for inclusion in the letter contract. The clause as drafted will include the following sentence: "In no event shall reimbursement aggregating more than $_____ be made under this letter contract." The figure to be inserted in the foregoing sentence will be the dollar amount represented by 70 percent of the dollar amount obligated by the letter contract (see illustration in subparagraph (2) of this paragraph).

(4) Properly authorized letter contracts do not require manual approval, irrespective of dollar amount, except letter contracts for personal and professional services procured under the authority of Public Law 600, § 1003.204–2 (c).

(5) *Deviations to letter contracts.* (i) The term "deviations" as applied to letter contracts means:

(a) The omission of any prescribed clause.

(b) Any addition to or deletion from or modification of language in a prescribed clause.

(c) Any collateral provision which, although not included in a prescribed clause, has the effect of altering the prescribed clause or changing its application.

(ii) Requests for deviations, as described above, proposed by AF personnel due to inability to negotiate acceptance by the contractor of the standard letter contract provisions will be forwarded for prior authorization of the Office of the Procurement Committee (MCPC), Hq AMC, strictly according to paragraph (e) (1), (2), (3) below, irrespective of the dollar amount involved, and will include the information required by § 1001.109–50 of this chapter.

(6) *Amendments to letter contracts.* (i) Amendments to letter contracts to accomplish new procurements will be avoided to the greatest practical extent to obtain early definitization of the outstanding letter contract. Unless the new procurement is so definitely allied to the procurement covered by the existing letter contract as to be inseparable, and urgency exists for the immediate commencement of work, a new letter contract will be issued rather than amending the existing letter contract. Amendments to letter contracts to accomplish new procurements will be accomplished the same as new letter contracts according to paragraphs (b), (c), (d) and (e).

(ii) Amendments to letter contracts for the sole purpose of extending the expiration date or of increasing the dollar amount which the contractor is authorized to expand or obligate will be controlled by the provisions of paragraph (c) (3) above and will have the approval of the officials designated in paragraph (c) (1) (i) through (ix) above.

(e) *Procedure*—(1) *Form of request.* Requests for authorization to issue letter contracts will be made in writing (electrically transmitted messages, letters, or DD Form 96, "Disposition Forms"). Oral requests (either in person or by telephone) will not be accepted. Subject of request will include the proposed contract number.

(e) *Procedure*—(1) *Form of request.* Requests will be reviewed and recommended, if appropriate for approval, by established contract review boards or committees and will be personally signed by the designated officials set forth in paragraph (c) (1) above. Electrically transmitted message requests will be ended by including the words "signed by" and inserting the official designated in paragraph (c) (1) above; e. g., "Signed by Director Procurement and Production."

(3) *Addressing requests.* Requests for authorization to issue letter contracts will be addressed and forwarded to Commander, AMC, attn: MCPC.

§ 1003.405–4 *Basic agreement (BA)*—(a) *Description.* (1) Basic agreements may be of the "Fixed Price" or "Cost

Reimbursement" type. Both types can not be covered by the same basic agreement, although one, and only one, of each type may be entered into by the Air Force with the same contractor.

(b) *Applicability of basic agreements to procurement actions.* (1) Subject to limitations stated therein, basic agreements will be used to cover each new negotiated procurement placed with a contractor after the execution of the basic agreement if the basic agreement is of the proper type to cover the procurement (FP or CR). The applicable sections and clauses of the basic agreement, and supplements thereto, will be made a part of the procurement instrument by reference therein to the basic agreement by number. If the basic agreement has been amended, the reference will include specifically the numbers of all supplemental agreements thereto previously finalized. The reference to supplements must specifically state the number of the document referred to; the terminology "Basic Agreement No. ------ as amended," will not be used.

(2) Except as set forth below, if a proposed new procurement is to be covered by a supplemental agreement to an existing procurement contract, the supplemental agreement will amend the existing procurement contract to conform to the most recent basic agreement and supplements. This rule applies regardless of whether such existing procurement contract was entered into under the existing basic agreement prior to the latest supplemental agreement thereto, or under a basic agreement which at the time of the proposed new procurement is over-aged, expired, terminated, or superseded or was entered into without reference to a basic agreement. In such actions the terms of the most recent basic agreement may be made applicable to the entire procurement contract on and after the effective date of the procuring supplemental agreement, if it is determined to be in the interest of the Government to do so, or may be limited to the work added by such procuring supplemental agreement. The parties may agree to supplementing an existing procurement contract without incorporating the most recent basic agreement, as required above, if: (i) no clauses then required by statute or Executive Order are omitted, (ii) ASPR clauses are added or modernized to the same extent as would be required if a basic agreement did not exist, and (iii) permission to use any deviation involved has not been rescinded or expired by lapse of time.

(3) Supplemental agreements, negotiated solely pursuant to the terms of an existing procurement contract and not involving new procurement, need not, but may if determined to be in the interest of the Government, amend such existing contract to conform to a subsequently executed or supplemented basic agreement.

(4) Basic agreements are not necessarily all inclusive. Clauses covering subject matter not covered in the basic agreement and applicable to contracts of the type being negotiated, are subject to negotiation for inclusion in the procurement contract to the same extent as if no basic agreement existed; however, if a basic agreement, as amended, is less than one year old, clauses that have been changed after execution of the basic agreement should not be substituted for clauses in the basic agreement covering like matter, unless the revised clause is made mandatory by statute, Executive order, or a specific statement to this effect in Subchapter A, Chapter I of this title.

(5) Pending the supplementing of an existing basic agreement, which is more than one year old, but which has not been superseded or terminated, such basic agreement may be used in the preparation of new procurement contracts if the clauses that would be required to make the procurement contract conform to current requirements of statute, Executive order, ASPR, or AFPI are inserted or substituted in the proposed procurement contract. Deviations pertaining to clauses that require substitution may be made in the substituted clauses if the revision requiring the substitution is not related to the deviation.

(6) If a letter contract has been entered into under a basic agreement which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract will incorporate the superseding basic agreement, or the supplemental agreement as applicable. If the basic agreement in this situation has been terminated without being superseded, or has expired or has become over-age by failure to revise it as required, the definitive contract which supersedes the letter contract may incorporate the clauses of the basic agreement which were incorporated in the letter contract together with such additional clauses as have in the meantime become mandatory by statute, Executive order or specific direction in ASPR.

(c) *Limitations.* (1) New procurement contracts will not incorporate the terms of superseded or terminated basic agreements.

(2) Portions only of the applicable terms of a current basic agreement will not be referred to in supplemental agreements to procurement contracts executed under superseded, expired, or terminated basic agreements, or in contracts prepared without reference to a basic agreement.

(d) *Procedure.* (1) Numbering: Each basic agreement will be numbered according to the established numbering system for contracts. For ease of identification, a separate block of numbers will be reserved therefor.

(2) If a contracting officer determines that a basic agreement with a contractor which does not have one is justified by the number of contracts being placed with such contractor and recurring substantial negotiating problems associated therewith, he may proceed with negotiations as authorized by subparagraph (3) of this paragraph.

(3) Authority to negotiate: ARDC is authorized to negotiate, write, and execute basic agreements with respect to research and development procurement only. Contracting officers of AMC field procurement activities and buying divisions, Hq AMC, are authorized to negotiate, write, and execute basic agreements. However, contracting officers of AMC field procurement activities and ARDC will not negotiate basic agreements with those concerns holding basic agreements executed by contracting officers of the Directorate of Procurement and Production, Hq AMC.

(4) Approval: All basic agreements and amendments will be submitted to Commander, AMC, attn: MCPC, for review and administrative approval prior to submission to contractor for signature. Prior to submission to the office of the Procurement Committee (MCPC), Hq AMC, each proposed basic agreement, or supplement thereto, will be submitted to the staff judge advocate of the installation negotiating the basic agreement for review; and in addition, any coordination deemed necessary to insure that the contents of the basic agreement are adequate and suitable for the needs of the Air Force will be obtained.

(5) Amendment or supersession: The amendment of basic agreements will be accomplished by consecutively numbered supplemental agreements, negotiated and processed by the activity which negotiated and executed the basic agreement. The covering agreement of such supplements will contain a statement that it conforms with ASPR and AFPI as of revisions ------ and ------ respectively.

(i) *Annual review.* Such activity will be responsible also for establishing procedures to insure that basic agreements are reviewed and revised annually on a timely basis to conform to statutes, Executive orders, ASPR, and AFPI. For the purpose of review, the term "anniversary of their effective date," § 3.405–4 (b) (2), of this title means one year after the date of execution of the basic agreement and each year thereafter, however, if a basic agreement has been amended by supplemental agreement so that it contains all required ASPR clauses effective on the date of such supplement, the term means one year from the date of such supplement. If a basic agreement is reviewed and no revision is required, a statement to that effect will be made by the contracting officer and a copy of such statement distributed according to Subpart F, Part 1053 of this chapter.

(ii) *Need for amendment.* The term "conform with the current requirements of this regulation" as used in ASPR does not require reopening negotiations on use of a deviation which has been approved previously for the basic agreement unless the clause to which the deviation applies has been revised in such a manner as to affect the deviation. Failure to accomplish required revisions will result in an unauthorized ASPR or AFPI deviation insofar as ASPR or AFPI clauses which have been changed or added are concerned.

§ 1003.405–5 *Indefinite delivery type contracts*—(a) *Definite quantity contracts*—(1) *Description.* The clause provided in § 1007.4039 of this chapter will

be used as a required clause with the (a) paragraph modified by deletion of the third sentence.

(2) *Limitations.* The Definite Quantity Contract will provide only for firm fixed-prices according to § 3.403–1 of this title and § 1003.403–1, or price escalation according to § 3.403–2 of this title and § 1003.403–2.

(b) *Requirements contract.*—(1) *Description.* The estimated total quantity stated for the information of prospective contractors will be contained in the contract as the estimated dollar amount of supplies or services to be procured during the contract period. Such dollar amount will be considered the amount of the contract within the delegation of authority to make awards and execute or approve contracts set forth in § 1001.457 of this chapter. Funds are obligated and delivery schedules and quantities are established by each call and not by the contract itself. The clause provided in § 1007.4028 of this chapter will also be used in requirements contracts as a required clause.

(2) *Applicability.* Requirements contracts are suitable for use in the situations contemplated in Subparts FF, GG, HH, and II, Part 1007 of this chapter, or for other frequently procured commercial type supplies or services where requirements are indefinite in quantity and frequency. They may also be used where specific item requirements are not presently known but where recurring requirements for similar supplies or services are anticipated, and firm fixed-prices can be established for the items contemplated.

(3) *Limitations.* (i) Requirements contracts will provide only for firm fixed-prices according to § 3.403–1 of this title and § 1003.403–1, or price escalation according to § 3.403–2 of this title and § 1003.403–2.

(ii) Requirements contracts will be used only when the contracting officer assures himself, by means of signed statements in the contract file by all activities authorized to make calls thereunder, that such activities will neither make a call on (or enter into a contract with) any other contractor for delivery of the specified supplies or services during the specified contract period.

(c) *Indefinite quantity contract.*—(1) *Description.* The clause provided by § 1007.4039 of this chapter, will be used as a required clause. Depending upon the situation, the contract may also provide for pricing on a time and materials basis pursuant to § 3.405–1 of this title and § 1003.405–1. The stated minimum quantity of the supplies or services will be the first call (order) for delivery under the contract and will be a part of the contract at the time of execution. In addition to the specific item(s) included in the first call, the contract may provide contractual coverage for future calls for similar type supplies or services where recurring requirements are anticipated, but specific item requirements are not presently known, provided that the pricing for such calls can be effected by the same method as for the initial specific supplies or services and is so provided in the contract. Except for the first call, the Government is under no obligation to order any supplies or services during the contract period. Funds are obligated and delivery schedules and quantities are established by each call, and (except for the first call) not by the contract itself. The stated maximum quantity contained in the contract will be the estimated dollar amount of similar supplies or services of the type involved to be procured during the contract period. Such dollar amount will be considered the amount of the contract within the delegation of authority to make awards and execute or approve contracts set forth in § 1001.457 of this chapter.

(2) *Applicability.* In addition to the ASPR applicability, after an indefinite quantity contract which includes the first call has been executed, this type of contract offers a means of expeditious contractual coverage where quantity, delivery, specific items, and price are not presently known but where recurring emergency requirements for similar supplies and services are anticipated.

(3) *Limitations.* (i) Indefinite Quantity Contracts will provide only for firm fixed-prices according to § 3.403–1 of this title and § 1003.403–1, price escalation according to § 3.403–2 of this title and § 1003.403–2, or pricing on a time and materials basis pursuant to § 3.405–1 of this title and § 1003.405–1.

(ii) This type of contract should not be used where firm requirements for future supply can be computed sufficiently in advance to permit a Definite Quantity Contract.

20. Sections 1003.605 and 1003.605–1 are deleted and the following substituted therefor:

§ 1003.605 *Order - invoice - voucher method.* Standard Form 44, "U. S. Government Purchase Order-Invoice-Voucher," is available in books of 25 sets, five copies each, with interleaved carbons.

§ 1003.605–1 *Limitations on use.* Additional conditions are hereby added to the conditions set forth in § 3.605–1 of this title as follows:

(a) The finance officer and appropriation accounting officer are located at the same installation.

(b) Requirement is chargeable against an obligation authority or the funds for the requirement were committed on the purchase request.

21. Sections 1003.652 through 1003.652–3 are added as follows:

§ 1003.652 *Procurement of contractual maintenance services aggregating no more than $500.* This section provides a procedure for obtaining contractual maintenance services not in excess of $500 per purchase action, when the development of a definite work statement and repair specifications are not considered economically feasible.

§ 1003.652–1 *Applicability of section.* This section applies to all AF procurement activities.

§ 1003.652–2 *Conditions for use.* The procedures contained herein will be used for the procurement of repair and/or maintenance services of commercial type equipment when the following conditions prevail:

(a) The aggregate amount of the procurement does not exceed $500. Requirements will not be "split" for the purpose of using this procedure.

(b) When it is not feasible to develop a definite work statement and repair specifications are not considered economical.

(c) A one-time or "sporadic" requirement is involved. For recurring or repetitious requirements for services on like or similar items, or for individual requirements estimated to exceed $500, procurement will be affected by one of the other approved types of contracts in ASPR and AFPI, as determined in the best interest of the Government.

§ 1003.652–3 *Purchasing procedures.* (a) The maintenance activity will furnish, with the purchase request, a general statement as to work to be performed and, to the extent possible, a statement relative to the performance and peculiar operating characteristics encountered immediately prior to the equipment becoming inoperative.

(b) The purchase request will indicate the maximum expenditure authorized to repair the specific item.

(c) The contracting officer will select only one competent and reputable firm for the performance of the required service. To the extent possible, this firm will be selected in the following chronological order:

(1) Manufacturer of the equipment.

(2) Service points controlled and operated by the manufacturer.

(3) Authorized dealers of the manufacturer.

(4) Other sources established in the immediate area with known performance capabilities and established reputation for good workmanship at fair and reasonable prices.

(5) Where more than one firm of equal qualifications (price and other factors considered) is readily available, such purchases of services will be distributed equitably over a period of time among all qualified sources.

(d) Contracting officers, after selection of a source as outlined above, will proceed with the procurement action in the following manner:

(1) In order to determine that the repair cost does not exceed the allowable cost authorized for repair, and to insure that reasonable prices will be charged for the repair needed, fixed prices will be obtained from the vendor for the cost of: (i) tear down, inspection, and itemization of labor and material needed for repair; and (ii) tear down, inspection, itemization of labor and parts needed for repair, and reassembly. The purposes of the two prices is to provide a firm price for the return of the nonreparable item in an assembled or disassembled condition as determined appropriate.

(2) Instruct vendor to proceed with the tear down, inspection and quote. Vendor will be instructed that the resultant price quoted should include the cost to: (i) tear down, (ii) itemize labor and parts needed for repair, and (iii) repair and place in serviceable operating condi-

tion, including all replacement parts and labor.

(3) Upon receipt of the quotation for the service outlined in subparagraph (2) of this paragraph:

(i) Obtain from the maintenance activity a statement as to the reparability of the item in light of the prices quoted and the reasonableness of the price quoted for repairs contemplated.

(ii) If the item is not reparable, notify accordingly and accomplish the purchase action for services performed in either subparagraph (1) (i) or (ii) of this paragraph, as appropriate, by petty cash if under $100 or by confirmation DD Form 1155 or Standard Form 44 if over $100.

(iii) If item is reparable notify vendor to proceed with repair by the issuance of a purchase order which itemizes the work to be accomplished as furnished by the vendor according to subparagraph (2) of this paragraph.

(iv) In the event the vendor's quotation exceeds the $500 limitation imposed for the use of this procedure, and it is determined that the services are still required, the breakdown submitted by the vendor may be used as a basis in soliciting competition for the requirement.

22. Delete all sections in Subpart H and substitute the following therefor:

SUBPART H—PRICE NEGOTIATION POLICIES AND TECHNIQUES

§ 1003.801 *Basic policy.*

§ 1003.801–1 *General.* (a) In determining that a price is fair and reasonable, it is necessary to consider quality, life, ease and cost of maintenance, storage, distribution, and other factors; the lowest price is not necessarily either a fair and reasonable or a favorable one to the Air Force. To buy at prices calculated to result in the lowest ultimate over-all cost, it is AF policy to encourage and develop competition and to negotiate close, firm prices whenever possible. The incentive, or increased profit, approach should be applied in negotiation, recognizing that profit is the motivating force in inducing contractors to use labor and materials economically and efficiently. While pricing cannot be reduced to a few simple terms or formulas, it can be described as an art requiring the exercise of common sense, possession of a keen sense of fairness, and recognition of certain basic pricing considerations. (See § 1003.101–51 for the objectives of negotiation.)

(b) Air Force appropriations constitute a substantial share of the defense budget and expenditures thereunder have a tangible effect upon the stability and health of the national economy. The Air Force is responsible for spending these public funds wisely and judiciously to obtain the supplies and services needed to carry out its assigned mission. Close, sound pricing is a logical aid in the discharge of this responsibility. Its objectives are to:

(1) Make the most economical use of appropriated funds.

(2) Encourage contractors to complete their contracts with the most efficient use of natural resources and manpower.

(3) Provide an incentive to contractors to minimize the cost of contract performance.

(4) Minimize Government and contractor administrative expense.

(5) Avoid budgetary adjustments and deficits.

(6) Avoid the generation of excessive profits and inflation.

§ 1003.801–2 *Responsibility of contracting officers.* (a) The pricing responsibility of the procuring contracting officer is assigned to the administrative contracting officer in the following instances:

(1) Where an existing contract provides for retroactive price redetermination after completion of the contract except where the procuring contracting officer determines, at the time of contract award, that it would serve the interests of the Air Force to retain the repricing responsibility. (See Subpart T of this part for instructions on repricing such contracts.) Fixed-price incentive contracts are not included in this assignment.

(2) Where AF equipment, including spare parts, ground handling equipment, special tools and test equipment is procured by indefinite quantity contracts.

(3) Where support items are procured under a provisioning document concurrently with the end items to which they relate. This assignment covers initial pricing of exhibits only.

(4) Exercise of the authority assigned to the administrative contracting officer by subparagraphs (2) and (3) above may be restricted by provisions in the contract; however, such restrictive provisions should be included in an instance such as described in § 1003.850–1 (b).

The contracting officer, when evaluating proposals in the procurement of "planned items," will consider the factors set forth in § 1053.101–6 (b) of this chapter.

(b) Price analysts are available to aid the contracting officer in his efforts to negotiate fair and reasonable prices and the contracting officer will consult, at his discretion, those analysts on important pricing matters. (See § 3.808–3 (a) of this title for guidance on when detailed analysis may be required.)

(1) The relationship between procuring contracting officer and price analyst in buying offices also exists between administrative contracting officer and price analyst in contract administration offices. This analyst will perform as a member of the negotiating team when pricing responsibility has been assigned to the administrative contracting officer.

(2) Contracting officers and other procurement personnel will conduct themselves according to the ethical standards prescribed in Subpart T, Part 1001 of this chapter.

§ 1003.801–3 *Responsibility of other personnel.* While the decisions of personnel outside procurement have a material effect on price, they usually are not guided by these instructions and may never see them. It follows that they must be made aware of instances where their decisions have an adverse effect on price. For example, specifications affect cost of production by influencing designs, materials and manufacturing processes. Because of this, the contracting officer must work closely with the technical AF organizations responsible for developing or approving specifications if the justifiable regard most engineers and companies have for their professional reputations for quality and reliability of product is not to result in unnecessary expenses. As a second example, quantities, like specifications, affect price substantially and, as in the case of spare parts and other support items, the contracting officer should make sure the requirements are developed so as to result in orders for reasonable and economical quantities.

§ 1003.802 *Preparation for negotiation.*

§ 1003.802–1 *Product or service.* Knowledge of product or service is one part of the value or product analysis process. In some cases, the contracting officer making this type analysis will need to make a complete review of the product or service including the skills and facilities involved; in other cases a more general knowledge of the product will be sufficient. Even where detailed knowledge cannot be acquired, surprising economies can be achieved by the thoughtful, curious contracting officer who takes the time for a careful look at the product he is buying.

(a) Product analysis is not only concerned with building up a price for a product, it also seeks to assure that the most economical product is being procured for the use intended. Some of the questions that are often asked in this kind of analysis are:

(1) Why is the item being procured?

(2) Is there a substitute or alternate product just as good?

(3) Is this the best and most economical product for the purpose intended?

(4) Is it overdesigned from a quality or performance standpoint? Underdesigned?

(5) Can manufacturing or assembly operations be improved?

(6) Can expensive materials be replaced with equally good materials at lower costs?

(7) Can packaging be simplified?

(b) At some time during the course of negotiation, the contracting officer will verify the requirement with the initiating office so that only desired quantities or services will be procured. This is particularly important where negotiations have been prolonged or the description of the item or delivery schedule changed in negotiation.

§ 1003.802–2 *Selection of prospective sources.* See §§ 1003.101–52, and 1003.101–53 (b).

§ 1003.804 *Conduct of negotiations.* When a contract is being negotiated initially, need for the product being purchased may be the primary factor that makes expeditious completion of negotiation mandatory. Where the contract has been placed and the contractor is operating under either a letter contract or a contract that provides for an interim revision of price, the need for a firm close price becomes the paramount factor requiring timely action. Lacking

a firm price, the contractor may not have the positive incentive to control the cost of his operations and the price eventually established may be higher than it would have been otherwise. The contracting officer should endeavor to conduct price negotiations with responsible representatives of the contractor's organization who are well versed with pertinent details of the proposals and the supporting cost estimates and who are empowered to commit the contractor to a contractual agreement.

§ 1003.805 *Selection of offerors for negotiation and award.* (a) The contracting officer may advise, when requested by a contractor during the course of negotiation and prior to award, if lower quotations have been obtained provided he does not identify the other quoting concerns nor their exact quotations.

§ 1003.808 *Pricing techniques.*

§ 1003.808–1 *General.* Under fixed-price type contracts, including redeterminable types, prices are to be negotiated, not separate elements of cost plus profit. In many cases a breakdown of price into cost and profit elements will be useful in the process of analysis, evaluation, and negotiation of proposed prices. A negotiated price is the basis for payment to a contractor under fixed-price type contractors; allowable costs are the basis for reimbursement under cost-reimbursement contracts. A negotiated price, once firm, becomes an obligation of the Air Force; it is the amount of money the Air Force is legally obliged to pay.

§ 1003.808–2 *Price analysis.* (a) Price analysis, the evaluation of prices proposed by contractors includes such specific techniques as comparative and value statistical analysis. The principal objective of price analysis is to enable the contracting officer to negotiate fair and reasonable prices sufficiently close to probable costs of production to induce contractors to control and reduce costs. The contracting officer will be able to solicit the advice and assistance of price analysis, in both procurement and contract administration organizations, as well as the advice of other supervisory and technical personnel. However, since the responsibility for sound close prices is ultimately his, the contracting officer must be familiar with the principles and techniques of price analysis and price negotiation and be able to do a competent job of pricing. However, in the most demanding, complex procurement situations, the contracting officer may turn analysis and negotiation of price and pricing terms over to a price analyst and only use his knowledge of pricing to evaluate the work of the analyst. When the contracting officer requests assistance of the price analyst, he should submit all pertinent information bearing on the price and terms, including competitors' quotations and estimates, if any, for review. If the price quotation is considered satisfactory, the analyst will give the contracting officer written comments summarizing his findings and opinion; if further negotiations as to price are to be conducted, the services of the analyst will be used actively in the conference.

(b) The comparative price technique readily discloses differences in price, although it may not as readily explain these differences. Comparative pricing has its most common application in the analysis of commercial or semi-commercial items when the item is sold by several suppliers or has been sold by one or more suppliers over a reasonable period of time. Where the fairness and reasonableness of price can be appraised adequately by this method, there is no need for any further analysis. If there are differences and these differences cannot be explained reasonably after consideration of the major factors which appear to bear on the procurement, the further technique of cost analysis may be used to obtain a more precise understanding of the major factors underlying the quoted price.

(c) Depending upon the degree of price analysis required, there are many types of data that can be used and, under appropriate circumstances, the following are pertinent:

(1) Prices, historical and current.
(2) Reports of cost analysis.
(3) Price analysis reports.
(4) Findings of AF plant or APD personnel.
(5) Government advisory audit reports.
(6) Balance sheets and operating statements.
(7) Contract provisions, e. g., specifications, quantity, length of delivery, delivery points, discounts, guarantees, warranties, taxes, royalties, progress payments, advance payments, and price redetermination or incentive provisions.
(8) Information prepared by other Government agencies, particularly material and labor indexes.
(9) Information gathered from trade journals or publications, catalogs.
(10) Renegotiation data. The Renegotiation Board Regulation 1480.4 (b) states that "Any Department named in or designated pursuant of section 103 (a) of the Act may be afforded access to documents in the custody of the Board when such Department determines that such assistance is necessary to further its procurement activities." The data is primarily of historical interest but may be one test of the past reasonableness of contractors' estimates.

§ 1003.808–3 *Cost analysis.* (a) The extent of analysis necessary will determine the amount and type of information needed; only pertinent and useful information should be requested from contractors. Excessive detail must be avoided, particularly on small dollar procurements where detailed analysis may not be worth the cost. More complex procurements, on the other hand, may require more detail than contained in the normal cost estimate DD Form 633. For example, it may be desirable to request a learning curve forecast of direct labor hours, or a budget of engineering man-hours and rates for a specific period of time, or a forecast of general research expense. It is important to remember that unnecessary information costs the Government and the contractor time and money to prepare and analyze, may delay negotiations, and contribute to an unfavorable buyer-seller relationship. Where a continuing relationship exists with an AF supplier, the exact types of pertinent supporting information to be submitted should be established.

(b) Analysis of statements of past costs or estimates of future costs is performed to establish their reasonableness in relation to work done or to be done and to afford one basis for evaluating and negotiating prices. Cost analysis is the technique of evaluating specific elements of cost to discover whether the cost of any element can be influenced by closer pricing and its aim is to encourage contractors to control and reduce costs; it is not to control profit.

(c) In evaluating costs it is advisable to concentrate on those cost elements which are large in dollar amount or in relationship to total cost. If, as is often the case in AF procurement, material or labor, or both, constitutes 50 cents or more of the sales dollar, it is necessary to give particular regard to those elements of cost. Reference to bills of material, engineering drawings, process sheets, and like basic information should be useful in many analyses, but often it is only the analyst working with the administrative contracting officer who has access to these types of data. This should be true particularly in the AF plant representative's office so this type analysis may be requested most generally from that source.

§ 1003.808–4 *Profit*—(a) *General.* (1) A contract price usually can be related to estimated direct and indirect costs and some estimated amount of profit but realized profit may differ materially from estimated profit, depending upon the manufacturer's ability to produce within the estimated costs. In relation to total estimated direct and indirect costs, profit is a minor part of the price, but to a contractor it is the normal goal of business. From the AF point of view, profit has two important aspects: (i) to induce a contractor to undertake performance of a contract by offering prospect of a monetary gain, and (ii) to persuade him to perform more efficiently than he otherwise might by affording him the opportunity to earn more profit.

(2) Pricing negotiations should recognize such pertinent profit considerations as the type of contract selected and the conditions surrounding the individual procurement. Estimated profits should not be isolated from estimated cost in negotiating a price. There is inherent in the fixed-price-incentive contract, however, a separate identification of cost and profit, but even here the amount or rate negotiated as target profit should reflect considerations developed in negotiating that segment of price identified as target cost.

(3) Across-the-board profit agreements with a contractor disregard the type of contract employed and pertinent considerations affecting an individual procurement and should not be made. Similarly, flat rates or preconceived percentages of profit must be avoided, for, in the long run, such concepts work contrary to the incentive approach by penal-

izing the efficient producer and rewarding the inefficient or marginal producer.

(4) Estimated profit should always be considered as gross profit before Federal income taxes. On cost estimates, such as required by DD Form 633, "Cost and Price Analysis," profit should be estimated as a percent of cost. Some suppliers, however, customarily relate profit estimates to sales, but these quotations can be readily converted to a cost basis.

(5) For guidance in establishing contract fees for CPFF construction contracts, see AFR 70–5.

(b) *Contractor's performance.* Because it is AF policy to reward good performance through application of the incentive approach in its contracting, demonstrably poor performance should result in reduction of profit. This policy may have its most important application in the case of design changes where the contracting officer's review establishes that the change was made necessary by a deficiency in the contractor's design. In this situation, the contracting officer first must determine whether the cost of the change is something the contractor should bear wholly or in part. If the responsibility can be fixed with the contractor and the change negotiated so that the contractor bears at least a part of its attendance cost, the question of profit reduction becomes academic. If however, the responsibility is shared in such a way that it becomes reasonable for the Air Force to pay the cost of the design change, the figure agreed to by the Air Force should include little or no provision for profit.

§ 1003.808–5 *Subcontracting.* (a) Major subcontracts pose special pricing problems to the Air Force and these arise from the fact that, after the initial procurement has been placed by the prime contractor, the opportunity for effective competition is reduced; the supplier successful in the initial procurement will have gained the competitive advantages of cost experience, established facilities, proved production techniques and partially or wholly amortized tooling. Three interrelated problems arise from this situation: (1) the need to give the prime contractor a positive incentive to make the first purchase a sound one in terms of product and price; (2) the need to encourage close pricing in the sole source or limited competitive situations in follow-on buys; and (3) the need to price the prime contract at a level consistent with sound subcontract prices. Although the prime contractor is responsible for subcontracts and subcontract prices, the procuring and administrative contracting officers must cooperate to solve these three problems. Successful solution of the third problem is the key to solution of the first two; one way this may be achieved is to negotiate firm prices with the prime contractor before he has established firm prices with his major suppliers. To do this properly, the procuring contracting officer will need information from the Administrative Contracting Officer to evaluate the estimated cost of subcontracting and the Administrative Contracting Officer will need the help of pricing and technical specialists to review the prices proposed for major subcontracts. Where detailed price analysis is needed, evaluation will be based on competitive proposals solicited from prospective suppliers, cost experience, and comparison of estimated cost of doing the work in-plant by the prime contractor. The pricing and contracting guidelines, criteria and philosophies established in Subparts D and H, Part 3 of this title and Subparts D and H of this part apply to subcontract proposals as well as those from prime contractors and should be used in analysis of major subcontracts.

(b) The success of the efforts of the procuring contracting officer to negotiate firm contract prices that give the prime contractor incentive to negotiate close firm subcontract prices and of the efforts of the administrative contracting officer to foster reasonable subcontract prices is governed largely by the efficiency of the prime contractor's purchasing department. The AF Program for Analysis of Contractor Procurement (monitored by the Contract Management Staff Division (MCPPC), Hq AMC) has been established to promote prime contractor's purchasing efficiency. Its success depends in part upon the support given to it by the administrative contracting officer and upon the effectiveness of his surveillance of the purchasing system once it has been approved. There are at least two examples of special conditions the administrative contracting officer may encounter in review of major subcontracts that could require him to seek assistance from Hq AMC. One such instance would be where administrative contracting officer learns, by monitoring major subcontract negotiations or other means, that the prime contractor is attempting to negotiate on the basis of inadequate price and cost data. If this deficiency cannot be resolved and the magnitude of the subcontract could affect the soundness of the final prime contract price, the administrative contracting officer should request advice and assistance immediately, by the most expeditious means, from the Pricing Staff Division, Hq AMC. In a second instance, administrative contracting officer may discover that a subcontractor is realizing an excessive profit. While profit in itself is not an indicator of the reasonableness of price, the existence of excessive profits should always require a further analysis of the prime contractor's pricing techniques and, where possible, of the subcontractor's cost estimating practices. If prices are found to be unreasonable and the profits unjustified, the prime contractor should be asked to attempt price adjustment. Administrative contracting officers will notify the Pricing Staff Division, Hq AMC, whenever the price cannot be negotiated on a reasonable basis or when there is reason to believe that other Government prime contractors may be doing business with the same supplier.

§ 1003.809 *Audit as a pricing aid—*(a) *General.* (1) An audit of a contractor's historical costs by a Government audit agency is often useful to the contracting officer pricing or repricing AF contracts. Audits, as used in pricing new fixed price procurements and repricing redeterminable or incentive type contracts, are advisory in nature and should present facts that will be interpreted, evaluated, and applied, where pertinent, by the contracting officer in performance of his job. An audit is concerned primarily with a contractor's historical costs while cost analysis, more often than not, is concerned with the future activity of costs. Properly presented in a form useful to the negotiator, an audit report also may be useful in helping predict this future cost activity.

(2) Auditors do not recommend "disallowance" of costs under fixed-price type contracts as they do under cost-reimbursement type contracts because costs are not reimbursed, prices are paid. Therefore, auditors "question" costs in advisory reports. The contracting officer, in negotiating price, will take such questioned costs into consideration, exercising judgment in this area and giving due regard to the fact that prices, not costs, are finally negotiated.

(b) *Application.* When requesting an advisory audit for assistance in negotiating either revised prices for contracts with interim price redetermination clauses or, as occasionally will happen, initial contract prices for new procurements, the contracting officer will require the auditor to include in the advisory report (i) trend information and (ii) identification of any special, nonrecurring cost items and any significant changes in rate of expenditure or volume of sales, with comments confined to statements of fact and showing, where available and applicable, trends in the following cost areas:

(1) Direct material (raw, purchased parts and subcontracted) prices and yield, scrap dollars and rate.

(2) Direct productive labor (all classifications) hours and rates.

(3) Indirect expenses (all pools used by the contractor).

(c) *Conditions for use.* (1) There is little to be gained by continued request for advisory reports where system survey reports of the contractor's accounting practices and estimating procedures are current; and where prior or current audits indicate little difference in concept between the contractor's version of costs and the audit version. In such cases the contractor's version of costs should be adequate and should make it possible for auditors to devote more time to more important areas.

(2) See Subpart T of this part for procedures pertaining to use of audits in administration of price redetermination contracts.

§ 1003.811 *Record of price negotiation.* The price negotiation process may be divided into two distinct phases, one or the other of which will require a written summary report. One phase is the preliminary review and analysis of the contractor's proposal. The other is the negotiation conference including prenegotiation conference and review. As a general principle, there will be only one report written for each pricing action. If, as frequently happens on relatively small dollar competitive procurements, the preliminary analysis establishes the reasonableness of the contractor's pro-

posal and makes further price negotiation unnecessary, the pricing report will be written at that time by the person performing the analysis. If, on the other hand, initial review establishes questions about the proposal which make a negotiation conference necessary, the single pricing report will be written after completion of the negotiation conference. There is one exception to this general principle of a single pricing record and this occurs where analysis of specific costs has been requested from an AF price analyst assisting the ACO or from a Government auditor. The general format for reports of pricing actions is discussed in following paragraphs.

(a) The report of analysis or negotiation should record the significant events that led to agreement upon price and, if a new procurement, type of contract. It need not be a detailed report but it should present, in a clear, concise and informal manner, the essential information needed to permit evaluation of the pricing job. The memorandum should give the background necessary to identify and understand the procurement and should pinpoint all pertinent considerations. If a memorandum of negotiation, it should show the AF position, how it was arrived at and how it compared with or contrasted to the contractor's proposal. It also should recap the main topics discussed in the negotiation, presenting whatever opposing arguments may have been made. It should detail the agreement and explain the principal reasons why it is a sound pricing arrangement for the Air Force. The following order of discussion is recommended (where negotiation conference was not needed, the report may be modified):

(1) Introductory summary showing type of pricing action and the results.

(2) Particulars and a brief description of the procurement situation, including, when appropriate, brief item description, quantities, delivery dates, prices and contract type proposed and agreed upon, names of conferees and pertinent factors about competitive proposals, previous procurements, requirements, specifications, production rate, etc. If the contract is of the cost-reimbursement type and special treatments for certain type costs were agreed upon, these agreements should be included in the memorandum. This story can be told in one or several paragraphs, and, because the report is a summary, it should bring together bits of information otherwise scattered throughout the contract file.

(3) Summary of analysis or negotiation including contractor's proposal, the AF evaluation of it and, if a negotiation conference is held, the AF negotiation objective. The summary will discuss all relevant price factors to establish the reasonableness of the objective and the pricing arrangement agreed to, that is, the price and contract type. Because negotiations typically require discussion and detailed evaluation of specific cost and profit items without reaching agreement on those separate factors, the report need include only the price agreed to and the negotiator's ideas as to relative weights given to the significant price elements in the negotiation. However, this instruction neither sanctions vague generalities that cover inadequate evaluation nor requires justification for treatment of specific items of cost or profit.

(b) Reports of cost analysis performed by field personnel at the request of the buying activity are used in evaluation of a contractor's price proposal. As such, the report should record specific facts disclosed by analysis and also may include opinions based upon those facts. Besides showing the finding of facts, the report will indicate the extent of analysis and identify the data used in the evaluation but it will not include any recommendation as to reasonableness of price. This determination must be made by the contracting officer after consideration of all factors pertinent to the particular procurement.

§ 1003.850 *Special pricing instructions.*

§ 1003.850–1 *Pricing of support items*—(a) *General.* (1) By definition, the term "support items" includes spare parts, modification kits, technical data, ground handling equipment, special tools, and test equipment. Where instructions obviously apply only to one of these categories, only that particular group will be cited.

(2) As with procurement of end items, it is the AF objective to procure necessary support items, when needed, at fair and reasonable prices. However, because support items on a typical contract may number in the hundreds or even thousands, special adaptations of pricing techniques and policies are necessary.

(3) It is AF policy to procure support items using firm fixed-price contracts whenever feasible. Considering the administrative time and cost inherent in pricing and repricing lengthy exhibits, such a policy is feasible whenever reasonably close prices can be established and contractor's accounting system will permit separate identification of cost of support items. Greater use of firm fixed prices will result in substantial reduction in administrative cost to the contractor and permit AF personnel to spend their efforts in more fruitful areas. Even where support items are purchased concurrently under a provisioning document and the contract provides for revision of price during the period of contract performance, firm fixed prices are feasible if experience is sufficient to permit reasonably close pricing. If that experience is lacking, exhibits will be subject to the same terms and conditions that govern the pricing and repricing of the end item.

(4) Problems inherent in pricing support items usually require that line item prices be reviewed and approved by AF personnel working at or near the contractor's plant. This is because it is often advantageous to use the contractor's records of invoices and labor tickets to verify the reasonableness of the prices paid for purchased parts and to determine the reasonableness of labor hours quoted for production of support items.

(b) *Responsibility.* (1) Section 1003.801–2 (a) (2) and (3) state the administrative contracting officer's responsibility in pricing support items when such items are purchased on indefinite quantity contracts and concurrently under provisioning documents. This responsibility includes initial pricing of all exhibits and the revision of prices where the indefinite quantity contract includes a price redetermination clause. It may also include the repricing of support items procured concurrently under provisioning documents, but this assignment will depend upon the decision of the procuring contracting officer. As a general rule, the procuring contracting officer should accomplish the repricing in all instances where prices of support items and end items can be revised at the same time. Where it is not possible to redetermine the prices of both concurrently, the responsibility should be assigned to the administrative contracting officer.

(2) Where the administrative contracting officer is responsible for pricing or repricing support items, as discussed in paragraph (b) (1) above, he is also responsible for preparing and processing the contractual instruments adding the newly priced exhibits to the contract. The administrative contracting officer's pricing actions will be subject to review and approval of Subpart F, Part 1055 of this chapter. For discussion of the issuance of supplemental agreements, see Subpart D, Part 1055 of this chapter.

(3) Where support items are procured without a provisioning document on other than indefinite quantity contracts, the responsibility for final review and approval of prices, unless otherwise specified in the contract, remains that of the procuring contracting officer. However, the priced exhibits will be reviewed by the administrative contracting officer and forwarded, with comments, to the buying activity concerned.

(c) *Techniques.* (1) In general the pricing policies and methods of analyzing contractors' proposals which are outlined in preceding paragraphs of this Part also apply to the negotiation of spare parts contracts.

(i) Spare parts will usually be priced in the same manner as the end items, when produced concurrently and when spare parts volume was taken into consideration in establishing prices for the end items. However, if conditions existing at the time of pricing the end items have changed, the established price level may no longer be valid. In that event, it will be the responsibility of the contracting officer to negotiate fair and reasonable prices after giving due consideration to changes in volume, business trends, production methods, or other pertinent factors.

(ii) The selection of contract types for spares and consideration of profit as a reward for risk assumed frequently involve different factors than those relating to the negotiation of price of the end item. Spares which are standard shelf items may be procured through formal advertising. However, when spares are fabricated by the contractor or subcontracted on the basis of contractor-owned drawings and specifications, there is less choice in the selection of contract type and there may be little if any opportunity of choosing among competing contrac-

tors. There may, in fact, be only one source for the spares. With sole-source procurement, the element of competition is lacking and the negotiation of a price which is fair and reasonable becomes much more difficult.

(iii) In negotiating prices for spare parts and particularly in selecting the type of contractual instrument to be used, it is important that the contractor be given the maximum incentive to reduce costs. As is true of the end item, a contractual arrangement which permits the contractor to increase profit through effective operations and lowering of costs is desirable from the standpoint of the national economy and in the long-run will permit the Air Force to obtain more equipment for less procurement dollars.

(2) There are many different methods of pricing spare parts exhibits and specific techniques will vary from contractor to contractor. Some price exhibits by applying formulas or loading factors which are based on current and projected costs. Others use parts catalogs and quote list prices, plus or minus an adjustment factor. These two particular methods are described in the following subparagraphs but it should be understood that this emphasis does not mean endorsement of these procedures to the exclusion of other methods which produce consistent and reasonable results.

(i) Formula pricing of spare parts.

(a) Pricing formulas are projections of indirect expense and profit rates which are applied to base material and labor costs to develop unit prices. When used, the contractor relies upon the averaging effect of formula application to give him a reasonable profit for the total productive effort and does not attempt to secure a reasonable profit from the sale of each separate item. Because of this, the price of any given item may be somewhat higher or lower than if a separate detailed estimate had been made. Formula pricing should be confined to procurements where the different items to be priced are sufficiently large in number and varied by type and cost to permit the principle of averaging to operate effectively.

(b) Pricing formula should be consistent with the contractor's established cost records. It is desirable to review and negotiate the factors used in the formula periodically.

(ii) Catalog pricing of spare parts. Catalog quotations are usually subject to a premium or discount adjustment. It is desirable whenever practicable to negotiate a standard adjustment factor (premium or discount) to be applied to catalog prices for a stated period of time.

(3) Costs and prices of spare parts may be developed concurrently and on the same basis as for the end product or may be developed at different times and by different methods. Even when spares are produced concurrently with the end product, the costs relevant to spare parts may not be maintained separately and the identification of costs of spares may require the use of allocation and estimated factors. In general the same techniques for evaluating the price for the end product are applicable to spare parts. (See §§ 1003.808–2, 1003.808–3 and 1003.808–4).

(i) Formula methods of pricing spare parts require a careful initial review of the contractor's methods, followed by periodic tests of the system to determine the reasonableness of the results. Such review and testing should cover the base costs (ordinarily material and labor), the loading factors calculated for such types of costs as factory overhead, G & A and packaging and the methods used to apply such loading factors to the base costs.

(ii) Catalog prices, adjusted for premiums or discounts, can frequently be tested for reasonableness by comparing the adjustment factor with that offered by the contractor to commercial customers. Consideration should be given to the effect of the cumulative volume of AF procurement.

§ 1003.850–2 *Pricing changes to fixed-price and cost-reimbursement type contracts*—(a) *General.* (1) Changes to contracts usually result from revision in delivery schedules or packaging requirements or from engineering changes that either modify, delete, or substitute component parts, or grant specification deviations. Only rarely are contract changes made that do not affect the work and therefore the price or estimated cost and fee contemplated by the contract; the term "no cost change" can be a misnomer for a charge or credit should accrue to the Government from most changes.

(2) As a rule, all contract changes will be priced and the contract price adjusted within a reasonable and specified time after the change is authorized. (See § 1054.310 of this chapter.) Even where § 1054.311 of this chapter permits delay in formalization of the change, individual change proposals will be priced, analyzed, and negotiated promptly.

(3) For procedures applicable to engineering changes resulting in termination claims or property disposal, see § 1008.555 of this chapter.

(b) *Responsibility.* The administrative contracting officer normally will review all quotations made by the contractor for price adjustments resulting from changes before forwarding with his recommendations to the procuring contracting officer for his approval and revision of the contract.

(c) *Procedures.* (1) The dollar value of any change is the difference between the prices of the article or work deleted and the article or work added. The price of the article or work deleted should approximate the price estimated for that article or work at the time it was made a part of the contract. Because the dollar value of any change will be determined by negotiation with the contractor, the tests of reasonableness and equity should guide the administrative contracting officer in each particular instance.

(2) Because the pricing of changes is often a complex task, the administrative contracting officer may use a cost analyst to: (i) determine that contractor's estimating procedures are adequate to the job or if inadequate to suggest necessary procedural improvements to the contractor, and (ii) evaluate the reasonableness of the more significant change proposals.

(3) Detailed review by the cost analyst should be required only in the case of significant proposals. Spot checks should suffice for all others. Significance is largely a matter of dollar value but care must be taken to determine that a no-cost change or a seemingly insignificant proposed adjustment should not in fact be a significant price decrease. Adequate review thus requires a knowledge and understanding of the product and the manufacturing processes involved in its production as much as it does a knowledge and understanding of contractor's cost accounting and cost estimating procedures. Analysis of change proposals will be most effective if the proposals are reviewed at some stage with contractor personnel responsible for their preparation. (See § 1003.808 for price analysis techniques.)

(4) After review has established the reasonableness of the proposal or led to negotiations that have revised the proposal to an acceptable figure, the administrative contracting officer will forward contractor's proposal together with recommendation to the procuring contracting officer for incorporation into the contract. If necessary negotiations have not been successful, he will forward contractor's proposal together with a report of his findings and his position in the unsuccessful negotiations to the procuring contracting officer for further negotiation and resolution.

See § 16.813–1 of this title for instructions regarding use of DD Form 1107, "Change Order Price Analysis."

§ 1003.850–3 *Pricing intercompany sales or transfers of material.* Intercompany or interdivisional sales or transfers of materials should ordinarily be negotiated on a cost, no profit basis, to the transferor. However, transactions involving standard or semi-standard commercial items of this nature (other than items for which the Government is either directly or indirectly the sole user), regularly manufactured and sold by a contractor through commercial channels, may be negotiated on a basis that recognizes a fair profit return. In such cases the contractor should be expected to certify that the price does not exceed the lower of (a) the transferor's sales price to its most favored customer for the same or a similar item, quantity and quality considered, or (b) the price of other suppliers for the same or substantially similar item.

§ 1003.850–4 *Prenegotiation reviews.* (a) When, in the procurement cycle, it becomes advantageous and necessary to meet with the contractor to agree upon the terms and conditions of a proposed contract or upon adjusted prices on an existing contract, the meeting will be preceded by a conference of the Government representatives who will make up the negotiating team. This prenegotiation conference will permit the Government team to: (1) discuss the contractor's proposal in detail sufficient to

achieve understanding, (2) express opinions and air problems that relate to the proposal and to the contractor's operations but which should be resolved prior to the meeting with the contractor, and (3) determine negotiation objectives and the course of action to be followed in realizing these objectives.

(b) The negotiating team generally will include the contracting officer (either administrative or procuring or both, as appropriate), the price analyst and all others (including the assigned auditor in major procurements) who have specific and pertinent information to contribute. The team membership will always be restricted to those few absolutely necessary to advance the progress of the negotiations, although this limitation should not be construed to exclude observers assigned for training purposes.

(c) There will be occasions when those responsible for manually approving contracts within AF procuring activities will find it advantageous to be briefed by the negotiating team after negotiation objectives have been firmed but prior to the conclusion of the conference with the contractor. Procedures for this type of prenegotiation review should be determined locally. It will be discovered that review is particularly fruitful if procurements involve situations where:

(1) A new contract follows contract(s) where the contractor's performance was unsatisfactory.

(2) A need for a significant change in profit pattern is indicated.

(3) A new procurement substantially increases a contractor's annual sales and production volume.

(4) Costs have increased drastically beyond those originally estimated.

(5) Items procured have performed poorly and required modification and retrofit.

(6) Superior performance indicates justification for additional profit consideration.

(7) The procurement obligates a significant portion of the AF budget.

23. Sections 1003.903 through 1003.908 are deleted and the following substituted therefor:

§ 1003.903 *Air Force Emergency Facilities Depreciation Board*—(a) *Authority.* The Commander, AMC, has established and appointed a board designated the "Air Force Emergency Facilities Depreciation Board." The Board consists of three members, one of whom has been designated chairman. Any two members of the Board will constitute a quorum. The concurrence of any two members of the Board will be necessary in arriving at decisions of the Board. Authority to appoint members of the Board and to designate a chairman has been delegated to the Director of Procurement and Production, Hq AMC, with power to redelegate such authority to the Deputy Director/Procurement, Hq AMC, without authority of further redelegation.

(b) *Application.* The determinations of the Board will be binding upon all AF purchasing and contract auditing activities and other military department (as provided in DOD Instruction 4105.34) with respect to the amount of true depreciation which will be used by such activities in computing and allocating depreciation costs of emergency facilities covered by Certificates of Necessity in the contract pricing of negotiated contracts. The Board has designated AFMPP-PR-2 at Hq USAF as a liaison representative to act with representatives of the Departments of the Army and Navy to perform such coordinating functions as may be required under DOD Instruction 4105.34.

(c) *Duties and responsibilities of Board.* (1) The primary function of the Board is to determine, upon written request of contractors, the amount of true depreciation of emergency facilities for which the Defense Production Administration or the Office of Defense Mobilization (ODM) issues or has issued Certificates of Necessity, according to the basic principles and other provisions of DOD Instruction 4105.34. In making this determination the Board is authorized to rely upon the accuracy of the information submitted by contractors according to § 1003.908. The extent to which depreciation of emergency facilities is considered to be true depreciation will depend upon contractor's demonstration of loss of economic usefulness.

(2) In determining the amount of true depreciation to be apportioned to the 5-year emergency period, the Board will consider as factors pertinent to the case including but not limited to the following:

(i) The reason the contractor planned its expansion program. (Consideration must be given to rapid advances in recent years both in military and commercial fields and normal facilities improvements or expansions which may have been required for the contractor to maintain its competitive status.)

(ii) The depreciation policy followed by the contractor in computing prices in connection with commercial production.

NOTE. The effect on the financial structure of the contractor of the increased expenditure for capital investments should have no bearing on the determination of true depreciation.

(3) The Board's responsibility is limited to determinations on facilities covered by Certificates of Necessity.

(4) The Board will make separate determinations for each type of facility; e. g., buildings, machine tools, other equipment.

(5) The Board will keep minutes of its proceedings and maintain a permanent record of the facts and other considerations entering into the determinations made.

(6) The Board in special or unusual cases, may request Defense Production Administration (DPA) to furnish available information which would be pertinent in determining true depreciation in those cases where DPA has previously issued a Certificate of Necessity.

(7) In its discretion, the Board may:

(i) Provide for hearing oral presentations by contractors.

(ii) Conduct plant visits by its members or representatives.

(iii) Develop by other available means the facts required for making a determination.

§ 1003.904 *Procedures.* (a) Contractors may request a determination of true depreciation of an emergency facility by submitting all pertinent information to the Board through the administrative contracting officer. If the contractor sends the request directly to the Board, it will be the responsibility of the Board to provide the appropriate administrative contracting officer with a copy of the request. To the extent practicable, contractors will include all certificates issued in connection with any individual plant or location which they desire to have considered for determination of true depreciation in connection with defense contracts, providing separate summary schedules (see item 1 (c) of § 1003.908–1) of those certificates issued prior to and subsequent to December 10, 1952. Subcontractors may similarly request a determination of true depreciation by submitting all pertinent information to the cognizant prime contractor which in turn may refer the request to its administrative contracting officer for transmission to the Board. If more than one prime contractor is involved, the subcontractor may submit the request to one prime contractor and should not duplicate the submission to other prime contractors. The administrative contracting officer will promptly forward all requests to the Board through the AMA.

(b) Before proceeding with a case for study and review, the Board will determine that the Air Force has jurisdiction in the case. Requests for determination received by the Board, involving facilities concerning which the Department of the Army or Navy is responsible for making determinations of true depreciation pursuant to the provisions of paragraph IV E of DOD Instruction 4105.34, will be forwarded by the Board to the Emergency Facilities Depreciation Board of the responsible department. Assignments to each departmental Board will be made according to the provisions of paragraph IV E of the above Instruction. A liaison committee consisting of one representative to be designated by each Board, in addition to such other functional duties as may be assigned to it by joint action of the three Boards, will make assignments in doubtful cases and will compile and maintain a master assignment list.

(c) Determinations of the Board will be transmitted by the Board to the contractor concerned, AF procurement activities concerned, the Auditor General, Headquarters Liaison Office, Wright-Patterson Air Force Base, Ohio, and the Emergency Facilities Depreciation Board of the Departments of the Army and the Navy. The Board will make similar distribution of determinations received from the Army and Navy Boards.

(d) On emergency facilities covered by certificates of necessity issued on or after July 1, 1954, whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that

consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for defense use.

§ 1003.905 *Duties and responsibilities of industrial resources division, Hq AMC.* Industrial Resources Division (MCPB), Hq AMC, in reviewing the need for facilities for defense purposes, will consider the possible cost to the Government of such facilities. If the Air Force is prime sponsor, MCPB will include, with the notification to ODM of the need of the facility for defense purposes, the required data and a statement of all the factual information of the facility available to the Air Force which might be useful to ODM.

§ 1003.906 *Duties and responsibilities of AF buying personnel.* (a) Only after the Board has made a determination of true depreciation will such true depreciation be considered an allowable element of cost.

(b) In negotiating new contract prices or estimated costs or in redetermining prices or overhead rates on existing contracts, the cost of true depreciation may be considered, subject to the provisions of this part. Unless otherwise provided for by a specific contract clause, price, ceilings, and final overhead rates which have been firmly established are not subject to adjustment.

(c) Clauses providing for adjustment of price because of subsequent determination of true depreciation will not be included in any firm fixed-price contract awarded on a competitive basis.

(d) Existing cost-reimbursement type contracts may be subject to adjustment of allowable costs, without specific amendment. Under audited reimbursement of overhead, administrative contracting officers are authorized to reimburse the cost of true depreciation computed according to determination of the Board for the entire period of the contract, except where buyers have informed the administrative contracting officer in writing that true depreciation has been indirectly considered in negotiation of the fee. Buyers are responsible for examining active cost-plus-fixed-fee contracts and for notifying the administrative contracting officer of such consideration. Reimbursement for true depreciation under such circumstances depends upon fee adjustment and written release from the buyer to the administrative contracting officer.

(e) Certain contracts, both fixed-price and CPFF, contain a clause which permits adjustment of price or costs and fee if the national-defense policy changed to recognize true depreciation. In negotiating such adjustments the policies set forth in this Instruction apply.

(f) With regard to contracts currently being negotiated and where a determination has not been made by the Board, if the contractor insists on the inclusion of a clause providing for later adjustment of prices (or estimated costs) to reflect the determination of true depreciation, the following clauses will be used as appropriate:

(1) *For currently negotiated fixed-price contracts.*

Contractor warrants that the prices specified herein do not contain any element reflecting more than normal depreciation of the emergency facilities constructed or acquired by the contractor under Certificates of Necessity If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this contract, then within 6 months from the date of such determination made in accordance with DODI 4105.34, dated July 1, 1954, and applicable directives or such additional times as the contracting officer may approve, an equitable adjustment of contract prices for the supplies or services called for hereunder shall be negotiated and evidenced by an amendment to this contract.

(2) *For currently negotiated final rates of overhead.*

Contractor warrants that the final rate of overhead specified herein for the period(s) ---------- do not contain any element reflecting more than normal depreciation of emergency facilities constructed or acquired by the contractor under Certificates of Necessity. If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this contract, then within 6 months, or such additional time as the contracting officer may approve, from the date of such determination made in accordance with DODI 4105.34, dated July 1, 1954, and applicable directives, an equitable adjustment of final rate of overhead specified above shall be negotiated and evidenced by an amendment to this contract.

(3) *For current price redetermination negotiations.*

Contractor warrants that the redetermined prices specified herein for the period(s) ---------- do not contain any element reflecting more than normal depreciation of emergency facilities constructed or acquired by the contractor under Certificates of Necessity. If the contractor elects to file a request for determination of true depreciation within 12 months from date of approval of this supplemental agreement, then within 6 months, or such additional time as the contracting officer may approve, from the date of such determination made in accordance with DODI 4105, dated July 1, 1954, and applicable directives, an equitable adjustment of contract prices for the supplies or services called for hereunder shall be negotiated and evidenced by an amendment to this contract.

(g) Buyers will ascertain from the contractor the status of settlements with the Renegotiation Board for prior years, and if the contractor has returned excess funds for any period, no adjustment in contract costs will be made for that period.

§ 1003.907 *Duties and responsibilities of AF administrative contracting officers.* (a) Requests for determinations of true depreciation presented to administrative contracting officers will be promptly forwarded to the Board through the AMA. Where the determination is clearly the responsibility of the Air Force Board (see par. IV, E of DODI 4105.34), the administrative contracting officer will retain one copy of the request without copies of the certificates, forwarding the original and the three copies of the request and three copies of the certificates, but will take no other action except on specific request of the Board. The AMA will retain one copy of the request including one copy of the certificates, forwarding the original and two copies of the request together with two copies of the certificates to the Board.

(b) The administrative contracting officer's responsibility as to pricing or repricing of subcontracts under negotiated prime contracts is neither greater nor less than existed prior to the issuance of the pricing policy on true depreciation. Where review and approval of subcontract prices are required, the administrative contracting officer will follow the principles set forth herein. The determination of true depreciation in connection with subcontracts is the responsibility of the Board, only to the extent that the Air Force is required to approve subcontract costs and fees or prices; however, no allowance of true depreciation will be approved unless the Board has made a determination.

(c) To the extent that the administrative contracting officer reviews or negotiates prices in connection with prime contracts, he will be governed by the policies set forth herein.

§ 1003.908 *Contractors' requests for determinations of true depreciation.* Requests for determination of true depreciation submitted by contractors will:

(a) Set forth the information called for by § 1003.908–1. Contractors are required to furnish five copies of the information, properly certified (see par. (c) below), and three copies of the Certificate applications (see item 2 of § 1003.908–1) including supporting schedules.

(b) Be signed by a responsible official of the contractor.

(c) Contain the following certification by the official signing the request:

I hereby certify that the information contained in the foregoing request is true and correct to the best of my knowledge and belief.

24. Sections 1003.908–1 and 1003.909 are added as follows:

§ 1003.908–1 *List of contractor information.* Following is the information to be submitted by contractors to the Board to support requests for determination of true depreciation on emergency facilities covered by Certificates of Necessity:

Information To Be Submitted by Contractors to the Board of Support Requests for Determination of True Depreciation on Emergency Facilities Covered by Certificates of Necessity

The Contractor will submit to the Army, Navy, or Air Force Emergency Facilities Depreciation Board (as appropriate), his request for a determination of true depreciation by an original and four copies of items other than item 2, and three copies for item 2. The request will contain the information indicated below. The contractor, to the extent practicable, will include all certificates issued in connection with any individual plant or location which he desires to have considered for determination of true depreciation in connection with the defense contracts. The responses to these questions may be in narrative or tabular form as the contractor deems best suited to his circumstances with such amplification as he considers necessary. If the contractor considers

a given question to be inapplicable in his particular case, he should so state and give reasons therefor. The reporting and/or record keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 (AF Bul 51, 1951). (Bureau of the Budget No. 21-R060 (expiration—indefinite)).

1. (a) Name and address of contractor.

(b) Location of the facility or facilities.

(c) Summary of the cost of the facilities (segregated by individual necessity certificates) substantially as follows:

	Cost					
Land	Buildings and fixed installations	Equipment	Other	Total	Date of completion	Percent certified

Necessity Certificate No. ------

Location of Facilities (City and State).

2. Photostats or similar facsimiles of Necessity Certificate(s) (Form DPAL-101), and a copy of the application(s) (including supporting documentation) to the Defense Production Administration or the Office of Defense Mobilization therefor.

3. (a) When did you first authorize your expansion program in connection with the Necessity Certificate(s)?

(b) Why did you plan this expansion program?

4. What military contracts and subcontracts do you now have requiring the use of each facility? For each contract and subcontract furnish the following:

(a) Contract number.

(b) Total dollar value.

(c) Undelivered dollar value.

(d) Estimated completion date.

(e) Type of contract (CPFF, CPFF-fixed overhead, fixed price, fixed price-redetermination, fixed price-incentive, etc.).

5. With which military departments or military contractors are you now negotiating or do you expect to negotiate for proposed new procurements? Indicate type of product, end item estimated dollar amount.

6. Have you requested a determination of "true depreciation" for other facilities from any other military department(s)?

(a) Yes or no.

(b) Department(s).

(c) Certificate file number(s).

7. State for each item or by groups or categories comprising similar type of items on Appendix A of Necessity Certificate(s):

(a) (1) Annual normal depreciation rate currently approved by the Bureau of Internal Revenue for income tax purposes.

(2) Rate at which item is being depreciated by you in your operating accounting records.

(3) Rate being used for military contract pricing.

(b) Is this item, group or category integrated in or isolated from the production process to the extent that special consideration should be given to it in determining true depreciation?

(c) Is this item, group or category convertible to your possible post-emergency operations?

(1) Fully or partially and percent of original cost not convertible.

(2) Estimate of useful remaining life in years.

(3) Not convertible.

(d) What plans do you have for the use or disposition of this facility, item, group or category after the emergency period?

(e) Explain to what extent, if any, the facility, item, group or category may cause prospective extraordinary obsolescence of pre-existing facilities which are not, in fact, already obsolete.

(f) Describe briefly and state cost of any special construction features included in this facility, item, group or category which were made necessary exclusively by defense production requirements.

8. State any additional information other than that submitted above which should be taken into consideration in making a determination of true depreciation for this facility, item, group or category.

9. State your estimate of true depreciation for each facility, item, group or category and your evaluation of the above facts to support such estimate.

§ 1003.909 *Department of Defense Instruction No. 4105.34.* DOD Instruction 4105.34, July 1, 1954, subject: "Treatment of Depreciation on Emergency Facilities Covered by Certificates of Necessity for Contract Pricing Purposes," reads as follows:

I. PURPOSE

The purpose of this instruction is to restate and amend Department of Defense implementation of Defense Mobilization Order No. III-1 (former DMO-11), Amendment 1, issued by the Acting Director of Defense Mobilization, effective July 21, 1952, as amended by Amendment 2, issued by the Director of Defense Mobilization, effective May 10, 1954, with respect to the extent to which accelerated amortization may be allowed as a cost in negotiated contract pricing. The pertinent paragraphs of this amended order read as follows:

6. For the purpose of cost computations in negotiated contract pricing, true depreciation, which includes any extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of depreciation which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing.

7. It is recognized that cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to facilities to be used in the performance of negotiated contracts for which certificates have been or will be issued, the procurement agencies concerned will, to the extent required for the purpose of cost computations in connection with the negotiation of contract prices, have the responsibility for determining true depreciation. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation.

II. APPLICABILITY

A. The principles and procedures set forth in this instruction shall be applicable in the consideration of costs for purposes of pricing or repricing of all negotiated contracts of the Departments of the Army, Navy, and Air Force, the performance of which requires the use of emergency facilities. The term "negotiated contracts," as used herein, means all contracts, other than those awarded pursuant to formal advertising, in which costs are a factor in contract pricing; it includes cost-reimbursement-type contracts, contracts containing price redetermination clauses, incentive-type contracts, and fixed-price contracts where estimated costs are used in negotiating firm prices. The term "negotiated contracts," as used herein, also covers subcontracts of the same types as prime contracts to the extent that the policies of the respective military departments make their representatives responsible for the approval or disapproval of prices or costs of such subcontracts. With respect to subcontracts under negotiated prime contracts the procurement agency concerned shall have no greater responsibility than heretofore.

B. These principles and procedures shall be applicable to all negotiated contracts placed after the effective date hereof and to all existing negotiated contracts (including letters of intent) at that date where firm prices have not been finally determined or redetermined and to all existing cost-reimbursement-type contracts not completed at that date except as to predetermined overhead rates or fixed amounts of overhead which have finally been agreed upon for particular periods.

III. BASIC PRINCIPLES

A. As indicated by DMO-11, Amendment 1, "for the purpose of cost computations in negotiated contract pricing, true depreciation which includes extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of emergency facilities which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing."

B. The meaning of the term "true depreciation" shall conform to the generally accepted concept of depreciation accounting which may be defined as follows: A system of accounting which aims to distribute to the cost of operations, the cost of capital assets calculated to have expired for any accounting period due to such causes as wear and tear, action of the elements, and prospective inadequacy or obsolescence. Obsolescence of facilities may be brought about by reduced economic utility of facilities without loss of productive utility, such as by technological changes affecting the demand for the products of an industry, as well as by changes affecting the economic use of individual machines. Special requirements for relocation of facilities may also result in obsolescence.

C. Obsolescence of emergency facilities due to prospective loss of economic utility after the emergency period is a special hazard in some industries. However, in some cases possible overcapacity in an industry is really represented in preexisting facilities which are in fact obsolete; in such cases the new facilities may be expected to displace the old facilities after the emergency, and it may not be said necessarily that there is extraordinary obsolescence applicable to the new facilities during the emergency period. In cases where the introduction of emergency facilities may cause prospective obsolescence of existing facilities after the emergency period (when such existing facilities are not already obsolete, in fact), true depreciation for emergency facilities should not include allowances for prospective extraordinary obsolescence of the existing facilities; however, in such cases extraordinary obsolescence applicable to the existing facilities, when used in military production, should be considered separately to the extent appropriate in the circumstances.

D. In the case of emergency facilities covered by Certificates of Necessity, for the purpose of depreciation computations in contract pricing, an arbitrary assignment of five years from date of completion of construction or acquisition of the respective facilities shall be made as representing the period of the emergency. The entire cost of such facilities first shall be fairly apportioned as between the emergency period and the post-emergency period; secondly, the portion

of the cost of such facilities assigned to the emergency period shall be prorated over the fiscal periods thereof for purposes of determining overhead costs in any fiscal period to be allocated to the cost of performance of defense or other contracts.

E. The allocation of the cost of facilities as between the emergency period and post-emergency period shall be made with consideration of the following:

1. The estimated prospective post-emergency usefulness of the facilities in number of years of useful productive life. Consideration should be given to the post-emergency use (both civilian and military) which it is expected the facilities will have. In this connection, the character of the expected post-emergency use may be different than the emergency-period use.

2. The additional costs of special-construction features of the facilities fairly assignable exclusively to defense requirements.

3. Subject to the application of the principles outlined herein, consideration shall be given to the portion of the cost of emergency facilities certified for amortization plus so-called normal depreciation for tax purposes during the emergency period on the uncertified portion of the cost of such facilities. (See particularly paragraphs F and G of this section.)

4. The normal peacetime life of facilities having a normal peacetime utility. If Bulletin F of the Bureau of Internal Revenue is used in connection herewith, care must be exercised in its use, as its data may not be typical of any specific contractor or industry, especially in the emergency period.

It must be emphasized that this is a process of cost allocation which does not contemplate an appraisal of the resale value (other than residual salvage value) or replacement cost of emergency facilities at the end of the emergency period. Potential "use value" to the particular contractor concerned after the emergency period should be the primary basis on which loss of economic usefulness, and therefore true depreciation, is determined.

F. Certificates of Necessity have been issued in some cases providing for the amortization of emergency facilities for tax purposes during the emergency period in amounts in excess of true depreciation. It is also possible that Certificates of Necessity may have been issued in isolated cases providing for the amortization of emergency facilities for tax purposes in amounts less than true depreciation. Such variances may be attributable to the granting of other incentives than true depreciation, or to the practice of following industry-wide patterns of certification without reference to true depreciation in specific cases. The excess of tax amortization over estimated true depreciation shall not be allowable as a cost for the purpose of pricing negotiated contracts, either directly or indirectly as a factor of "contingencies" or profit allowance.

G. It is the intent of this instruction to give contractors a reasonable and properly allocable allowance to cover the estimated loss of economic usefulness of their emergency facilities in production under defense contracts. The procedures for determining such allowances must be such as will expedite determination; this requires avoidance of an impossible perfectionism. There is no intent to limit the cost allowance to depreciation that would be allowable for income tax purposes if there were no Certificates of Necessity, nor to necessarily require that the allowance be below tax amortization covered by certificates. Each case must be judged on its merits in the light of these principles. If the result obtained by the application of the principles outlined herein indicates substantial justification of the total amount of amortization and depreciation allowable for tax purposes during the emergency period, as a reasonable measure of true depreciation, such amount shall be accepted, without adjustment, as true depreciation. In those isolated cases where substantial justification can be shown for a larger amount of true depreciation than the total amount of amortization and depreciation allowable for tax purposes during the emergency period, the larger amount shall be allowable as a cost for purposes of contract pricing.

H. Contractors may use normal depreciation without requesting a determination of true depreciation, or may elect to use normal depreciation even though a determination of true depreciation has been made. In either such case, contract pricing for both the emergency period and the post-emergency period (i. e., throughout the entire life of the emergency facility) will be based upon normal depreciation; and in such cases § 15.205 (b) (2) of this title is not intended to apply to assets fully amortized on the contractor's books of account under certificates of necessity. In all other cases, contract pricing for the post-emergency period will be based on depreciation computed by allocating the undepreciated cost of the emergency facilities at the end of the emergency period (cost less true depreciation for that period) over the estimated remaining life of the facilites, provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered true depreciation.

IV. Procedures

A. Cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to emergency facilities used in the performance of negotiated contracts for which Certificates of Necessity have been or will be issued, the procurement agency concerned shall be solely responsible for estimates of such depreciation for contract pricing purposes in the light of the principles set forth herein. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation—such requests should be held to a minimum.

B. In order to expedite administration of the determination of true depreciation for the emergency period for a specific contractor, it will be appropriate to make overall determinations of true depreciation of emergency facilities covered by Certificates of Necessity on a plantwide or productwide basis of classification of such facilities by such groupings as may be appropriate in consideration of general similarity of the facilities from the standpoint of length of useful productive life.

C. In the case of contracts to which this instruction is applicable which are in force at the effective date of this instruction, price redeterminations, cost-incentive adjustments, and cost reimbursements may continue to be made in accordance with the pricing formula established in the initial pricing negotiations, provided the contractors are agreeable, and provided there is no evidence that the contractor has been allowed more than true depreciation in pricing, either directly or indirectly. When costs of such contracts are redetermined in the light of the principles set forth herein, consideration shall be given to possible redetermination of the entire allowable costs and profit (or fees), as pricing factors, to the extent required to avoid excessive or duplicate allowances in costs or profits for such true depreciation. Allowances for contingencies and profits in initial price negotiations in some cases may have included indirect allowances for the excess of true depreciation or tax amortization over normal depreciation; in such cases no more should be allowed in total pricing for this factor than true depreciation.

D. Contractors shall be required to set forth to the authorized representatives of the procurement agencies all the pertinent facts having a bearing on estimates of true depreciation together with their evaluation thereof. Such authorized representatives of the procurement agencies will be expected to exercise reasonable judgment in their review and evaluation of the facts in arriving at estimates of true depreciation, in the light of the basic principles set forth herein, recognizing the impossibility of having absolutely demonstrable proof of the conclusions reached.

E. Where the emergency facilities of any contractor at one plant or at one general location are used in the performance of contracts for more than one of the military departments, one of these departments shall make determinations of true depreciation binding upon each other department. The responsible department shall be the one, if any, having plant cognizance procurement assignment; in the absence of such assignment the responsible department shall be the one, if any, having single-service audit responsibility; otherwise the responsible department shall be the one having the largest interest in effecting current procurement at the time of the determination. Similarly, each military department shall be responsible for delegating responsibility therein in a manner to avoid duplication in determinations of true depreciation within that department.

F. The following additional procedure is applicable to Emergency Facilities covered by Certificates of Necessity issued after July 1, 1954: Whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for Defense use.

V. Cancellation

This Instruction cancels Department of Defense Directive 4105.34, dated December 10, 1952, and Department of Defense Directive Transmittal 54–43, dated April 30, 1954.

VI. Implementation

Such implementing regulations, directives, or instructions as may be necessary shall be issued within each military department, and copies shall be furnished to the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Supply and Logistics) within forty-five (45) days from date hereof.

VII. Effective Date

This instruction is effective on the day of issuance.

T. P. Pike,
Assistant Secretary of Defense
(Supply and Logistics).

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133, 10 U. S. C. 2301–2314)

Part 1005—Interdepartmental Procurement

1. Section 1005.103–2 is deleted and the following substituted therefor:

§ 1005.103–2 *Exceptions to mandatory use*—(a) *Emergency procurement.* The authority to make the determination required by § 5.103–2 (a) of this title will be exercised by staff officers responsible for procurement: (1) within major command headquarters, (2) within headquarters of the first echelon of command

subordinate to the major command, and (3) at installations under the jurisdiction of the subordinate command. The determination will clearly set forth the circumstances of the emergency and specific reasons why the time element makes necessary purchase from sources other than Federal Supply Schedule.

(b) *Abnormal requirements.* Contracting officers are not obligated to purchase, and no contractor is obligated to furnish requirements for less than the minimum amount set forth in the applicable Federal Supply Schedule. Requirements for an item or combination of items in excess of the maximum amount set forth in the Federal Supply Schedule will not be placed with the Federal Supply Schedule contractor. Instead, the procedures in paragraph (d) below will be followed.

(c) *Similar items.* When it is determined necessary to deviate from a Federal Supply Schedule to meet a special AF requirement for similar articles or services, the using activity will include as an attachment to their request for purchase a complete justification for such deviation. This justification will be used by the contracting officer in the preparation and submission to GSA of the written statement required by 5.103-2 (c) of this title.

(d) *Purchase procedures.* The procedures for purchase of requirements which exceed the maximum amount set forth in Federal Supply Schedules vary with each schedule. In some cases it is optional for the Department of Defense to submit abnormal requirements to the General Services Administration regional office that executed the contract involved, while in other cases it is mandatory.

(1) When submission of abnormal requirements to GSA is optional, the purchase will be made in the open market pursuant to normal AF procedures, except as provided in subparagraph (3) below. In addition to normal solicitation of known manufacturers or suppliers, every contractor listed in the Federal Supply Schedule concerned will be solicited.

(2) When submission of abnormal requirements to GSA is mandatory, the requirements will be submitted to the GSA regional office designated in the schedule, except as provided in subparagraph (3) below. The request for purchase will set forth the required quantity, complete schedule description of the items, desired or required deliveries, shipping instructions, and citation of funds. If the regional office declines to process the purchase, it may authorize the Air Force to issue an order to the Federal Supply Schedule contractor or to purchase in the open market. In either case, the Air Force will accomplish the purchase as set forth in subparagraph (1) above and the authority to issue an order to the Federal Supply Schedule contractor (if received), will not be used.

(3) It is mandatory that requirements of household and quarters furniture exceeding the maximum order limitation in Federal Supply Schedule, Classes 17, 26, and 27 be submitted to the General Services Administration, Federal Supply Service, National Buying Division, 7th and D Streets SW., Washington 25, D. C. for procurement.

2. Subpart E of Part 1005 is added as follows:

SUBPART E—PROCUREMENT OF BLIND-MADE SUPPLIES

§ 1005.505 *Clearances.* In all cases where specifically authorized clearances are issued by National Industries for the Blind or General Services Administration, a copy of the clearance will be attached to the voucher to assure approval by the General Accounting Office.

§ 1005.550 *Procurement of services from agencies for the blind.* (a) Services, as distinguished from supplies, will not be procured pursuant to the procedure set forth in § 5.501 of this title. These provisions of ASPR do not apply to labor or services or anything other than tangible articles produced by the blind. (Com. Gen. B-128679 Sept. 18, 1956.) The renovation of cotton felt mattresses is considered an item of supply within the interpretation of this section.

(b) Agencies for the blind may be solicited in connection with proposed procurements of services but contracts must be awarded as a result of normal contracting procedures to the lowest responsible bidder all factors considered.

(c) When it is known that agencies for the blind are qualified to furnish services, requests for bids or proposals will be forwarded to:

National Industries for the Blind,
15 West 16th Street,
New York 11, N. Y.

(d) The foregoing does not preclude the completion of current contracts for services with Agencies for the Blind.

3. Subpart G of Part 1005 is added as follows:

SUBPART G—PROCUREMENT UNDER THE ECONOMY ACT FROM OR THROUGH ANOTHER FEDERAL AGENCY

§ 1005.751 *Procurement of research and development from other Government agencies*—(a) *Scope of section.* This section sets forth the policy and procedure for the procurement of research and development work from other Government agencies outside the Department of Defense. It applies to all agencies which obligate research and development funds.

(b) *Policy.* A basic policy of the Department of Defense is that a Government agency should not be placed in a position of competing with private industry. It is recognized that other Government agencies can perform for the Department of Defense certain services which are the normal province of those agencies and in which they possess unique skills. The military departments should take full advantage of such services, when appropriate.

(c) *Responsibility.* Each military department will determine what part of its research and development work, if any, will be performed by other Government agencies outside the Department of Defense. This determination is the responsibility of those agencies which receive research and development funds, i. e., Air Research and Development Command, Air University, and Alaskan Air Command.

(d) *Procedure.* Before a decision is made to place research and development work with another Government agency outside the Department of Defense, it will be determined that the contemplated work meets either of the following criteria:

(1) That the other Government agency, being considered as the sole source, normally functions in the province of the research and development work in question and that such agency is performing routinely a related task.

(2) Such other Government agency has facilities or competence that are suited uniquely to the task and can absorb the Department of Defense project with greater objectivity, efficiency, or economy than could another military department or private industry.

§ 1005.753 *Procurement of letter boxes from Post Office Department*—(a) *Scope of section.* This section sets forth the policy and procedure for the procurement of standard post office letter boxes from the Post Office Department.

(b) *Policy.* Standard post office letter boxes, equipped with combination locks, as procured by the Post Office Department for installation in civil post offices, can be used to great advantage in Air Force Mail Rooms. Air Force activities should take full advantage of the long experience and established procurement channels of the Post Office Department to effect the economical procurement of letter boxes which meet the specifications of the United States Postal Service. The Post Office Department has agreed to take procurement action for the Air Force in this regard.

(c) *Authority.* Air Force activities are authorized to procure letter boxes from the Post Office Department under local purchase procedures as a noncataloged commercial-type item. A request for special authorization is not required.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

PART 1006—FOREIGN PURCHASES

1. Section 1006.103-5 is added as follows:

§ 1006.103-5 *Nonavailability of supplies or materials*—(a) *Authority.* Secretary of the Air Force Order No. 657.1, April 23, 1957, subject: "Determination Under the Buy American Act" from the Assistant Secretary of the Air Force, reads:

1. The authority and duty to make determinations under the Buy American Act (41 U. S. Code sections 10a-d) where the basis for such determination is that the articles, materials or supplies of the class or kind to be purchased or the articles, materials or supplies from which they are manufactured, are not mined, produced or manufactured, as the case may be, in the United States in sufficient and in reasonably available commercial quantities and of a satisfactory quality is hereby assigned to the Comman-

der, Air Materiel Command; Director, Procurement and Production, Air Materiel Command; Deputy and Assistant Deputy/Procurement, Air Materiel Command; Deputy and Assistant Deputy/Ballistic Missiles, Air Materiel Command; Chief of a Division of the Directorate of Procurement and Production, Headquarters Air Materiel Command; Director of Procurement and Production of an Air Materiel Area and Air Force Depot; Director and Deputy Director of Procurement, Headquarters, Air Research and Development Command.

2. Secretary of the Air Force Order No. 657.1, dated March 1, 1956 is hereby superseded.

3. This Order is issued in accordance with Air Force Regulation 11-18, July 16, 1954, subject: Instruments of Delegation or Assignment of Statutory Authority.

(S) DUDLEY C. SHARP
Assistant Secretary of the Air Force

(b) *Finding and determination.* The provisions of § 6.103–5 of this title will be applied and used only after a determination, in writing, has been made by one of the above designated officials.

2. Subpart D of Part 1006 is added as follows:

SUBPART D—PURCHASES FROM SOVIET-CONTROLLED AREAS

§ 1006.402 *Exceptions.* Purchases in excess of $2,500 may be made only after specific approval of the Secretary of the Air Force. The buyer will prepare three copies of an appropriately worded finding and determination together with complete justification and forward them through channels (including Commander, AMC, attn: MCPPS) to the Director of Procurement and Production Hq USAF, attn: AFMPP-PR-1, Washington 25, D. C., for submission to the Secretary.

3. Subpart E of Part 1006 is deleted and the following substituted therefor:

SUBPART E—CANADIAN PURCHASES

§ 1006.501 *Purchases from Canadian suppliers.* All Air Force contracts placed with a supplier or contractor located in the Dominion of Canada, except contracts for items coded local purchase, will be made with the Canadian Commercial Corporation through their Washington office located at 2450 Massachusetts Avenue NW. Contracts by AF activities for items coded local purchase will be made directly from Canadian suppliers.

§ 1006.503 *Agreement with Department of Defense Production (Canada).* (a) Where proposals are received in Canadian currency, the amount of the resultant contract will also be stated in Canadian currency. The contract amount will be annotated to indicate clearly that the contract is stated in terms of Canadian currency. The administrative commitment document (ACD) will be written in terms of United States currency and will be based upon the rate of exchange used in evaluation of proposals.

(b) The Agreement provides for reciprocal inspection service on prime and subcontracts of the military departments and the Department of Defense Production (Canada).

§ 1006.550 *Solicitation of Canadian firms.* Canadian firms will be included on Bidders' lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests should be directed to the activity having procurement responsibility for the supplies or services involved. Invitations for Bids and Requests for Proposals will be sent directly to Canadian firms appearing on the appropriate bidders' list, with a copy to the Canadian Commercial Corporation, 2450 Massachusetts Avenue NW., Washington, D. C. IFB's and RFP's will also be furnished to the Canadian Commercial Corporation, even though not furnished Canadian firms, if requested by the Corporation for its own account.

§ 1006.551 *Submission of bids and proposals.* (a) Bids and proposals received directly from Canadian firms will not be accepted. The Canadian Commercial Corporation is to receive bids and proposals from individual Canadian firms for forwarding by cover letter to the procuring activity; and any bid or proposal received directly from a Canadian firm should be referred to the Canadian Commercial Corporation. The cover letter should state that awards as a result of the bids or proposals forwarded may be made to the Canadian Commercial Corporation and that the Corporation will accept the contract.

(b) Bids of the Canadian Commercial Corporation will be subject to the same evaluation as the bids of the United States firms and, as with United States firms, bids which do not conform to the essential requirements of the IFB will be considered nonresponsive.

§ 1006.552 *Basic agreement.* The Air Force has in effect a cost-reimbursement type basic agreement with the Canadian Commercial Corporation. All contracts of this type awarded as a result of requests for proposals will be based on and cite this basic agreement.

§ 1006.554 *Research contracts placed in Canada.* The Canadian Government through the Permanent Board of Defence has requested that all research contracts with agencies in the Dominion of Canada be cleared through a central point to eliminate competition for research projects and to prevent further subsidies from the various agencies of the United States for research in universities already supported by various Canadian federal agencies.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1007—CONTRACT CLAUSES

1. Section 1007.104–11 is changed as follows:

§ 1007.104–11 *Excess profit.* See § 7.104–11 of this title.

2. Sections 1007.105–5 and 1007.105–7 are deleted and the following substituted therefor:

§ 1007.105–5 *Liquidated damages—*(a) *Application.* (1) Liquidated damages provisions normally will not be included in AF contractual documents, but may be utilized where: (i) time of delivery or performance is such an important factor in the award of the contract that the Government will suffer actual damages if the delivery or performance is delinquent, and (ii) such damages would be difficult or impossible of ascertainment or proof. Liquidated damages provisions will not be used as a penalty for breach.

(2) Where reprocurement of the supplies or services can be effected readily from other sources, and the difference in price represents the full measure of damages to the Government, liquidated damages provisions will not be used.

(3) Liquidated damages provisions may be used only after prior approval of the following officials (as applicable) and the respective staff judge advocates: (i) the chiefs of the respective buying divisions, Hq AMC; (ii) the directors of procurement of AMC field procurement activities; (iii) the Director of Procurement, Hq ARDC; and (iv) within the other major air commands, at not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command.

(4) Foreign procurement activities will not use liquidated damages provisions.

(5) The law imposes the duty upon a party injured by another to mitigate the damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract for supplies and default occurs, appropriate action must be taken expeditiously to avoid any unnecessary lapse of time. Efforts must be made to procure the supplies elsewhere if delivery is not forthcoming within a reasonable time after the default occurs. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(6) This section is applicable to procurement by formal advertising and procurement by negotiation.

(b) *Contract provision.* (1) When a liquidated damages provision is to be used in a contract, such provisions will be as set forth in § 7.105–5 (b) of this title.

(2) The liquidated damages to be set forth in the contract must be based upon a bona fide pre-estimate of damages. This is of particular importance, since damages fixed without reference to the probable actual damages may be held to be a penalty and therefore unenforceable. (249 U. S. 361), (17 C. G. 827).

(3) Section 1053.102 of this chapter sets forth the usage of "required" and "desired" delivery dates. Use of the liquidated damages provision will not be made where the delivery is specified as "desired." Its use may be considered where the delivery date is "required," subject to the conditions set forth in paragraph (a) (1) above.

§ 1007.105–7 *Materiel inspection and receiving report.* Clause contained in § 7.105–7 of this title will not be used until the use of said clause is approved by the Bureau of Budget.

3. Sections 1007.203–18, 1007.204–11 and 1007.205–6 are deleted and the following substituted therefor:

§ 1007.203–18 *Nondiscrimination in employment.* See § 12.802 of this title.

§ 1007.204–11 *Excess profit.* See § 7.204–11 of this title.

§ 1007.205–6 *Materiel inspection and receiving report.* See § 1007.105–7.

4. In 1007.403–4, paragraph (a) (4) and (8) of the clause are deleted and the following substituted therefor:

(4) *Travel.* Expenditures by the contractor for transportation of the persons directly engaged in the performance of the work hereunder, plus, as provided in the Schedule, either reasonable actual subsistence expenses or per diem: Provided, that the expense for transportation hereunder by motor vehicle, other than common carrier or rented automobile, shall be reimbursed on an actual cost basis, or, at the Contractor's option, on a mileage basis at a rate not exceeding eight (8) cents per mile per vehicle, in lieu of the actual expenses of such transportation.

(8) *Overhead.* Such amounts representing Contractor's overhead costs determined in accordance with the clause of the contract entitled "Negotiated Overhead Rates".

5. Sections 1007.403–10 and 1007.2304–4 are deleted and the following substituted therefor:

§ 1007.403–10 *Termination.* Insert the clause set forth in § 8.702 of this title, deleting from such clause paragraph (k) thereof. If the contract is with a nonprofit institution or organization receiving no fee, insert the clause set forth in § 8.704 of this title.

§ 1007.2304–4 *Data and copyrights.* According to the instructions of subpart B, part 9 of this title and subpart B, part 1009 of this chapter, insert the appropriate clauses set forth therein.

6. Sections 1007.2506–3 (b) and 1007.2506–6 are deleted and the following substituted therefor:

(b) AFPI sections: 1007.2703–2 (Facilities); 1007.2703–6 (Cancellation of Subcontracts); 1007.2703–14 (Public Liability, Insurance); 1007.2703–15 (Taxes and Utilities); 1007.2703–16 (Reports to be Furnished); 1007.2703–24 (Reservation of Rights); and 1007.2704–1 (Labor Standards for Construction Work).

§ 1007.2506–6 *Use charge.* It is anticipated that the definitive contract contemplated hereby will provide that the Contractor will pay a use charge for any use of the facilities provided hereunder for which legal consideration is not obtained by the Government through applicable Government prime contracts. Pending agreement upon the terms of such use charge the facilities provided hereunder may not be used for non-Government work and may be used only on that Government work for which provided.

7. Sections 1007.2507 through 1007.2507–6 are added as follows:

§ 1007.2507 *Required clauses for letter contracts referencing a basic agreement.* The following clauses will be inserted in all letter contracts referencing a basic agreement.

§ 1007.2507–1 *Introductory paragraph.* Insert the clause set forth in § 1007.2504–1.

§ 1007.2507–2 *Direction to proceed.* Insert the clause set forth in § 1007.2504–2.

§ 1007.2507–3 *Reference to basic agreement.* This contract incorporates all the provisions of Section "C" of Basic Agreement No. _____ and the following clauses of Section "B" of said Basic Agreement and additional clauses, if any, set forth in Exhibit "A."

§ 1007.2507–4 *Provisions for definitizing contract.* It is anticipated that such definitive contract will be executed prior to _____ and will be a _____ type contract.

§ 1007.2507–5 *Authority to obligate funds.* Insert the clause set forth in § 1007.2504–5.

§ 1007.2507–6 *Provision for execution.* Insert the clause set forth in § 1007.2504–9.

8. Subpart AA of Part 1007, beginning with 1007.2703 and ending with 1007.2705–3 is deleted and the following substituted therefor:

Subpart AA—Clauses for Facilities Contracts

§ 1007.2702 *Definition.* As used throughout this subpart, the term "facilities contract" means any contract, other than a short form facilities contract, separate from any supply, service, or research and development contract, whereby industrial facilities, as defined in § 13.101 (f) of this title and § 1013.101 (f) of this chapter, are provided by the Air Force to contractors or subcontractors who may also be authorized to fabricate or acquire such facilities for the account, and at the expense, of the Government.

§ 1007.2703–2 *Facilities.* (a) Subject to (b) below in the case of nonprofit research and development contractors, insert the following clause:

Facilities

(a) *Facilities to be provided.* (1) The Contractor shall promptly perform the work specified in the Schedule, subject to the approval requirements set forth therein. Such approvals shall be requested by the Contractor prior to performance; however, the Contracting Officer may, at his discretion, grant approvals subsequent to performance with like effect as if granted prior to performance.

(2) The Government reserves the right to furnish to the Contractor, f. o. b. cars or carriers' equipment at the Contractor's plant or at the point nearest thereto that rail carrier service is available, any or all of the facilities to be provided by the Contractor hereunder in lieu of their manufacture or acquisition by the Contractor.

(3) The Government shall furnish to the Contractor the existing Government-owned facilities specified in the Schedule. Such facilities shall become subject to all the terms and conditions hereof upon receipt by the Contractor (unless otherwise specified in the Schedule). The Government makes no warranty, express or implied, as to the serviceability or fitness for use of the facilities so furnished; however, the Contractor shall have the right seasonably to inspect and reject such facilities for good and sufficient reason. All personal property included in the facilities furnished pursuant to this subparagraph (3), if not presently at the location specified in the Schedule, will be delivered to the Contractor, f. o. b. cars or carriers' equipment at such location or at the point nearest thereto that rail carrier service is available, transportation charges prepaid, as soon as practicable after the date of approval of this contract.

(4) The Government shall not be liable to the Contractor under this contract for damages or loss of profits by reason of nondelivery, or delay in delivery, of any or all of the facilities to be provided by the Government hereunder; however, a specific provision for an appropriate equitable adjustment, to include, without limitation, price and time of delivery, may be included in any supply, service, or research and development contract which may be affected by any such nondelivery or delay.

(5) Unless otherwise directed by the Contracting Officer or otherwise specified herein the Contractor shall perform this contract in accordance with sound industrial standards.

(b) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vender. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affirmation to any realty. Except as otherwise specifically provided in this contract, the Contractor (i) shall not pledge, assign, or transfer title to any Government property, nor do or suffer anything to be done whereby any Government property may be seized, taken in execution, attached, destroyed or injured, and (ii) shall not remove or otherwise part with possession of, or permit the use by others of any Government property.

(c) *Property control records.* The Contractor shall maintain adequate property control records, a system of physical inventory, and a system of identification of the facilities provided hereunder in accordance with the provisions of the "Manual for Control of Government Property in the Possession of Contractors" (ASPR Appendix "B") in effect on the date of this contract. As regards stock listed items, the Contractor shall also carry out a written program approved by the Contracting Officer for the support of Air Force industrial equipment central inventory control procedures including the following actions: (i) The keeping of historical records of the condition and maintenance of stock listed items, and (ii) the preparation and maintenance of the Central Inventory Control Reports approved by the Bureau of the Budget. In formulating the foregoing program the Contractor shall use as a guide AMC Manual 69–1 "Procedures for the Control of Government-owned (USAF) Industrial Equipment for

support of the Air Force Production Program" as amended and supplemented. Necessary changes to such program as required by changes in Air Force procedures will be made from time to time.

(d) *Right of diversion.* The Government reserves the right, when the Air Force determines that the interests of the Government will be served thereby, to (i) direct the delivery of any or all of the Government property to locations other than those specified in the Schedule, and (ii) require the Contractor to assign to the Government, or to any designated third parties, subcontracts of the Contractor for any or all of the Government property to be acquired under this contract. Costs incurred by the Contractor in connection with such diverted property, including transportation costs, may be included by the Contractor in its statements of cost submitted pursuant to the Reimbursement clause of this contract.

(e) *Maintenance.* The Contractor shall maintain a program approved by the Contracting Officer for the proper maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice, including normal parts replacements and, with respect to machinery and equipment, necessary rebuilding and rehabilitation. The program shall include all necessary maintenance and repair exclusive of capital type rehabilitation, as referred to in "f" below, and items which result from damages from which the contractor has been relieved from liability under the provisions of the "Liability" paragraph hereof. Such maintenance program, with respect to industrial machinery and equipment will be consistent with AMC Manual 69–1, as amended and supplemented. As soon as practicable after the execution of this contract the Contractor shall submit to the Contracting Officer for approval a statement of the maintenance program proposed to be maintained under the requirements of this clause. Such statement shall be in sufficient detail to reveal the adequacy of the Contractor's maintenance program. Upon approval thereof by the Contracting Officer, the Contractor shall comply with such program unless thereafter otherwise authorized or directed by the Contracting Officer.

(f) *Capital type rehabilitation.* The Contractor shall maintain a program as approved by the Contracting Officer for reviewing and reporting the need for major repair, replacement, and other rehabilitation work for the Government real property provided hereunder, if any, which are of a capital type and as such excluded from the Maintenance program covered in paragraph (a) hereof. The performance of any such capital type work shall be as directed by the Contracting Officer with reimbursement for the cost thereof as provided in the Schedule, or by appropriate amendment thereof.

(g) *Liability.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including incidental thereto) which results from:

(i) the willful misconduct or lack of good faith of any director or officer of the Contractor or of any manager, superintendent, or equivalent representative of the Contractor who has supervision or direction of (*a*) all or substantially all of the Contractor's business, (*b*) all or substantially all of the Contractor's operations at any one plant or separate location in which the Government property is installed or located, or (*c*) any separate or complete major industrial operation in connection with which the Government property is used;

(ii) a failure on the part of any of the Contractor's directors, officers, or other representatives mentioned in (i) above, (*a*) to maintain and administer, in accordance with sound industrial practices, a program for maintenance, repair, protection, and preservation of the Government property as required by paragraph (e) of this clause, or (*b*) to take all reasonable steps to comply with any appropriate written instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property; provided that with respect to any such loss or damage caused by an excepted peril, while the property is on the Contractor's premises or on any other premises where the property may properly be located, or caused by removal of the property from such premises because of an excepted peril, the Contractor shall be liable under this subparagraph (ii) only where such failure of the Contractor's representative, as set forth herein, results from his willful misconduct or lack of good faith; the term excepted peril, as used herein, means:

fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotions; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale;

(iii) a risk expressly required to be insured under this contract, but only to the extent of the insurance so required, or to the extent of the insurance, actually procured and maintained, whichever is greater; or

(iv) a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Provided, That if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear. The Contractor shall obtain from any subcontractor who is relieved of liability in accordance with this subparagraph (2) the same representations with respect to insurance covering loss, destruction or damage to Government property as the Government has obtained from the Contractor under provisions of this clause.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract. Notwithstanding the foregoing, however, the Contractor may, with the approval of the Contracting Officer, agree with subcontractors holding subcontracts for construction or installation work hereunder that Contractor, rather than such subcontractors, shall, in connection with such construction or installation, carry builder's risk insurance covering any property for which such subcontractors have not been relieved of liability under the provisions of (2) above, in which event the cost of such insurance shall be reimbursable hereunder to the extent provided in the schedule attached hereto.

(4) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of: (i) the lost, destroyed and damaged Government property, (ii) the time and origin of the loss, destruction or damage, (iii) all known interests in commingled property of which the Government property is a part, and (iv) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this paragraph (f) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(5) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property provided hereunder, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation in obtaining recovery (including the execution of instruments of assignment in favor of the Government and the prosecution of suit).

(6) If the Contracting Officer determines that the Contractor is not liable for damage to or destruction of facilities items provided hereunder and that it is in the best interests of the Government to effect their repair or replacement without delay he may require the Contractor to effect such repair or replacement, and the Contractor shall be reimbursed for the cost of performing such work to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement hereto.

(h) *Access.* The Government shall at all reasonable times have access to the premises where any of the Government property is located for the purpose of inspecting and inventorying the same, of removing all or any part of the same as authorized herein, or for determining compliance with the terms of this contract.

(i) *Continuing plant clearance.* (1) The Contractor shall notify the Contracting Officer whenever any Government property provided hereunder (i) is excess to the requirements of the using Government contracts, or (ii) is worn out, obsolete, damaged or otherwise unserviceable (whether or not under circumstances rendering the Contractor

liable therefor). With respect to severable items in privately owned plants the Contracting Officer shall order the disposition of such items within 120 days of such notification if he determines that they would interfere with the Contractor's use of the plant. Otherwise items may be disposed of or allowed to remain with the Contractor under this contract at the option of the Contracting Officer. Disposition actions hereunder and reimbursement therefor will be effected as provided in the Schedule.

(2) The Contractor shall attempt to sell or may retain facilities to be disposed of under this paragraph (i) under the same conditions as provided in paragraph (e) of the Termination clause of this contract.

(3) Upon disposition, or other agreement with the Contracting Officer satisfactorily accounting for all of the property provided hereunder, this contract will be considered completed without further termination action.

(4) The Government may, but is not obligated to, replace any items disposed of pursuant to (1) above.

(j) If the facilities contract is with a nonprofit contractor performing only research and development type contracts, the following changes will be made in the Facilities clause set forth above:

(i) In paragraph (c), Property Control Records, the reference in the first sentence will be revised to read, "Manual for Control of Government Property in the Possession of Non-Profit Research and Development Contractors (ASPR Appendix C)".

(ii) In paragraph (g) (5) revise the parenthetical words to read, "(Including the execution of instruments of assignment in favor of the Government and assistance in the prosecution of suit)".

(iii) In paragraph (i) (1) revise (i) to read, "(i) has not been required for any use for sixty (60) days and will not be required for any known use during the next six months".

(iv) In paragraph (e) substitute the word "maintenance" for the word "industrial" appearing in the first sentence.

(v) In paragraph (g) (1) (ii) substitute the word "maintenance" for the word "industrial".

§ 1007.2703–3 *Subcontracts.* Insert the following clause, except that paragraph (g) will not be included in contracts with nonprofit contractors.

SUBCONTRACTS

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

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

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

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

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

(f) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

(g) Unless specifically agreed in writing to the contrary by the Administrative Contracting Officer at the time of placing a subcontract hereunder, the Contractor warrants that the items and work procured by subcontract hereunder if delivered or performed in accordance with the subcontract specifications will be suitable for the purpose for which procured. If such items or work conform to the subcontract specification, but are not suitable for the purpose for which procured, the cost thereof shall not be allowable; provided, however, if such items or work are modified so as to be made suitable for such purpose, the cost of the item or work, except the cost of modification, shall be allowable.

§ 1007.2703–4 *Utilization of small business concerns.* Insert the clause set forth in § 7.104–14 of this title.

§ 1007.2703–5 *Buy American Act.* Insert the clause set forth in § 7.103–14 of this title.

§ 1007.2703–6 *Cancellation of subcontracts.*

CANCELLATION OF SUBCONTRACTS

Without terminating this contract under the provisions of the clause entitled "Termination," the Contracting Officer may at any time, in writing, authorize or direct the Contractor to cancel in whole or in part any subcontract theretofore placed pursuant to this contract. Settlement and reimbursement of any claims resulting from such subcontract cancellations shall be effected in accordance with the applicable cost principles of Section VIII of the Armed Services Procurement Regulation. The Contractor shall notify the Contracting Officer whenever it determines that facilities on order under this contract are excess to the requirements of the Contractor's Government contracts and subcontracts.

§ 1007.2703–7 *Reimbursements.* Insert the following clause, and see § 1007.2704–6. If the contract is with a nonprofit research and development contractor, change the reference in paragraph (a) of the clause from "Part 2" to "Part 3."

REIMBURSEMENT

(a) For the performance of this contract, the Government shall pay to the Contractor, upon inspection and acceptance by the Contracting Officer of the items or the work specified in the Schedule, the cost thereof, hereinafter referred to as "Allowable Cost," determined by the Contracting Officer to be allowable in accordance with the Schedule and with Part 2 of Section XV of the Armed Services Procurement Regulation, or Part 4 of Section XV in the case of any items of construction, as in effect on the date of this contract.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statements.

(c) As promptly as may be practical after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided, make payment thereon as approved by the Contracting Officer. Such payment may include progress payments made to subcontractors or suppliers for machinery and equipment and construction projects ordered hereunder in those cases where the subcontractor or supplier requires progress payment therefor and the subcontract or purchase agreement therefor contains a progress payments clause approved in writing by the Contracting Officer.

(d) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the "completion Voucher" or "completion invoice" and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitations, provisions relating to patents and the provisions of paragraph (e) and (f) of this clause), the Government shall as promptly as may be practicable pay any balance of Allowable Cost. The Contractor shall repay to the Government, upon demand, any overpayment theretofore made.

(e) The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, old claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the contract, which are not known to the Contractor on the date of the execution of the release or the date of any notice to the Contractor that

the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the contract relating to patents.

(f) The Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by the Contractor or any assignee which arise out of the performance of this contract and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of refunds, rebates or credits (including any interest thereon) arising out of the performance of this contract, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute Allowable Cost when approved by the Contracting Officer.

(g) In securing facilities, parts, materials and services required for the performance of this contract from other sources, or other divisions or controlled or wholly owned subsidiaries of the Contractor, the Contractor shall obtain competition to the maximum practical extent and shall take the most advantageous prices available with due regard to securing timely delivery of satisfactory facilities, parts, materials and services.

(h) The Contractor represents that the costs to be incurred and for which it will be reimbursed under this contract are not and will not be included as an element of cost in any other contracts with the Government or suppliers of the Government; provided that the foregoing shall not be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed by this contract and not made reimbursable hereunder.

(i) Except as otherwise provided in this contract, the cost of premium wage compensation, including overtime work, will be allowed as an item of cost hereunder only to the extent approved in writing by the Contracting Officer.

§ 1007.2703–8 *Limitation of cost.* Insert the following clause:

LIMITATION OF COST

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 1007.2703–9 *Records.* Insert the clause set forth in § 7.203–7 of this title but revising paragraph (a) (1) of that clause to read as follows:

(a) (1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract and the use charges payable hereunder (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed, or use charges payable, under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs and use charges properly applicable to this contract are readily ascertainable therefrom.

§ 1007.2703–10 *Assignment of claims.* Insert the clause set forth in § 7.103–8 of this title, but see § 1007.103–8 of this chapter.

§ 1007.2703–11 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2703–12 *Use and charges.* When facilities are to be provided for use in connection with supply, service, or research and development contracts or subcontracts, utilize the more appropriate of the clause set forth in paragraphs (a) and (b) of this section:

(a) When use of the facilities on a no-charge basis is contemplated, insert the following clause:

USE AND CHARGES

(a) The facilities provided hereunder may be used only as provided in (b) and (c) hereof. Work authorized under (b) below will be on a no-charge basis. Work authorized under (c) below will be on a charge basis. No work shall be performed with such facilities which would interfere materially with the performance of Government contracts or subcontracts, and first priority shall be given with due regard to existing commitments to Air Force contracts and subcontracts.

(b) The Contractor may use the facilities provided hereunder on a no-charge basis in the performance of Air Force prime and subcontracts held by the contractor which specifically authorize such no-charge use and which subcontracts have also been manually approved by the Administrative Contracting Officer of the Air Force prime procurement contract. In addition, upon request of another Government agency or department for no-charge use of the facilities provided hereunder on designated prime or subcontracts of such agency or department, the Contracting Officer may authorize such use.

(c) The Contracting Officer may also authorize the use of facilities provided hereunder on a charge basis for work other than on the contracts and subcontracts covered in (b) above. Prior to authorizing any use on a charge basis, the Contractor and the Contracting Officer shall come into agreement as to the facilities items which will be made available for use and the basis for the charge to be paid for such use. Such charge will be based on the rates set forth in paragraph (d) hereof and on the time the facilities are to be made available for such use as provided in subparagraph (1) hereof rather than on the time during which the property is actually used, unless this method is determined by the Contracting Officer to be impracticable or contrary to the best interests of the Government, in which event the procedures in subparagraph (2) hereof shall supply, and the parties shall agree upon a method of computing the extent of actual use. Such agreements hereunder for use on a charge basis will be reduced to writing and signed by both parties. Computation of charges due and payment therefor shall be made not less frequently than each six months. Payments of rental charges shall be effected by mailing or delivering to the Contracting Officer a check payable to the Treasurer of the United States accompanied by a statement in triplicate explaining the computation of the amount.

(1) *Time available-for-use basis.* The parties will agree in advance as to how much rental use may be made of the facilities during the period covered by such agreement. Thereafter the Contractor shall not exceed that amount of use without appropriate amendment to the agreement and shall pay for that amount regardless of whether or not the proposed use is actually made. However, payment shall be adjusted downward to the extent that the facilities are not in fact made available for the amount of time previously agreed upon.

(2) *Actual use basis.* The extent of actual use shall be determined in accordance with the method prescribed in the agreement authorizing rental use of the facilities on an actual use basis. At times prescribed in such agreement the Contractor shall submit a detailed report to the Contracting Officer of all rental use performed during the preceding period, or if there has been no such use during the preceding period shall submit a certificate to that effect. Such reports shall be supported by such records as are necessary to insure equitable action hereunder. On the basis of this report and of such other information as the Contracting Officer may require, the Contractor and the Contracting Officer will come into agreement as to rental use made during the period covered by such report.

(d) Rental to be charged pursuant to (c) above for the facilities shall be at the following rates, based upon acquisition cost of said facilities, unless otherwise provided in the Schedule:

(i) For land and land preparation, 5 percent per annum;

(ii) For building and building and land installations, 8 percent per annum;

(iii) For portable tools and automotive equipment, 25 percent per annum;

(iv) For metal-working machines of the types covered by Groups 3411 through 3419, and 3441 through 3449 of the Standard Commodity Classification Code, Directory of Metal Working Machinery, rental rates are as follows:

Age of equipment	*Monthly rental rate (percent)*
0 to 2 years	1¾
2 to 6 years	1½
6 to 10 years	1
Over 10 years	¾

The age of each machine shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On the first such 1 January following the actual date of manufacture, each machine shall become one year old, and on 1 January of each succeeding year it shall become one year older.

(v) For machinery and equipment other than that included above, 12 percent per annum.

The acquisition cost to be used for determining the foregoing rental charges shall be the price of the facility item charged the Government when the item was purchased, plus costs of transportation to, and costs of installation in, the place where the item will be used under this contract, if such costs are borne, or reimbursed directly, by the Government. Such acquisition cost shall be determined by the Contracting Officer in accordance with applicable Department of Defense regulations. When the facilities are authorized for use in accordance with subparagraph (c) (1) above, the full monthly rental rate shall apply if the facilities are made available for 170 hours or more during a month; if the facilities are made available for less than 170 hours in any month, the monthly rental rate for such month shall be proportionately reduced. When the facilities are authorized for use in accordance with subparagraph (c) (2) above, the full monthly rental rate shall apply if the facilities are actually used for 170 hours or more during a month; if the facilities are actually used for less than 170 hours in any month, the monthly rental rate for such month shall be proportionately reduced. (End of Clause.)

(b) When charges for the use of the facilities provided are fixed, insert the following clause:

USE AND CHARGES

(a) The Contractor may use the facilities provided hereunder for all legal purposes; provided that the Contractor shall not use such facilities, or any part thereof, for work which would interfere materially with the performance of Government contracts or subcontracts; and provided further that first priority shall be given, with due regard to existing commitments, to Air Force contracts and subcontracts.

(b) The Contractor shall pay a rental charge for the facilities provided hereunder computed at the following rates, based upon acquisition cost of the facilities, unless otherwise provided in the Schedule:

(i) For land and land preparation, 5 percent per annum;

(ii) For buildings and building and land installations, 8 percent per annum;

(iii) For portable tools and automotive equipment, 25 percent per annum;

(iv) For metal-working machines of the types covered by Groups 3411 through 3419 and 3441 through 3449 of the Standard Commodity Classification Code, Directory of Metal-working Machinery, rates are as follows:

Age of equipment	*Monthly rental rate (percent)*
0 to 2 years	1¾
2 to 6 years	1½
6 to 10 years	1
Over 10 years	¾

The age of each machine shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On the first such 1 January following the actual date of manufacture, each machine shall become one year old, and on 1 January of each succeeding year it shall become one year older.

(v) For machinery and equipment other than that included above, 12 percent per annum.

The acquisition cost to be used for determining the foregoing rental charges shall be the price of the facility item charged the Government when the item was purchased, plus costs of transportation to, and costs of installation in, the place where the item will be used under this contract, if such costs are borne, or reimbursed directly, by the Government. Such acquisition cost shall be determined by the Contracting Officer in accordance with applicable Department of Defense regulations. The rental charge shall be by the month at the above rates regardless of actual use made, except that the Contractor shall not pay a rental charge for any facilities items for any calendar month in which that item is not used. A prorated charge shall be made for fractional calendar months (i) at the effective date of this contract or upon date of delivery of each such item to the Contractor, whichever is later and (ii) at the effective date of the total or partial termination of this contract or the reporting of an item as excess, worn out or obsolete under Continuing Plant Clearance Procedures, whichever is earlier. Notwithstanding the foregoing, the rental shall commence when the item is placed in a usable condition in those cases where an item is unusable as a result of need for repairs or parts replacement at the time when rental would otherwise begin. Payment of the monthly rental charges shall be due on the tenth of each calendar month for the preceding calendar month's use and shall be effected by mailing or delivering to the Contracting Officer a check payable to the Treasurer of the United States accompanied by a statement in triplicate explaining the computation of the amount. (End of Clause.)

(c) If the facilities contract is with a nonprofit research and development institution, the following language should be added to paragraph (b) of the clause prescribed by paragraph (a) above:

The facilities may also be used on a no-charge basis (i) in the performance of any Government cost reimbursement type prime contract without fee or any cost reimbursement type subcontract without fee under such Government cost reimbursement type prime contract; or (ii) as approved by the Director of Research, Air Research and Development Command and subject to any conditions prescribed by him, in the performance of such work for research, developmental, and educational purposes as is directly or indirectly beneficial to the national security, provided that any such work not sponsored by either the Government or the Contractor shall be subject to the rental charges prescribed in paragraph (c) hereof.

As a minimum, approval under (ii) above should be conditioned on the furnishing of a report by the contractor with respect to the subject matter for which the facilities are provided without charge.

§ 1007.2703-13 *Termination.* Insert the following clause:

TERMINATION

(a) This contract may be terminated by the Government as to all or any of the facilities provided hereunder: (i) whenever the Contracting Officer shall determine that the facilities to be so terminated are not necessary for the performance of Government contracts; (ii) whenever the Government has requested priority with respect to the use of the facilities to be provided hereunder for any specified purpose and the Contractor has failed or refused to give such priority; (iii) whenever a receiver or trustee has been appointed for the Contractor or its property; or the Contractor has made assignment for the benefit of creditors; or the Contractor has become insolvent; or a petition has been filed by the Contractor, or against the Contractor and not dismissed within sixty (60) days, pursuant to the United States Bankruptcy Act for the purpose of adjudicating the Contractor a bankrupt, or for a reorganization of the Contractor, or for the purpose of effecting a composition or a rearrangement with the Contractor's creditors; (iv) whenever the Contractor has violated any of the terms, conditions or covenants of this contract and has failed to cure such violation within thirty (30) days from the date of notice thereof by the Government to the Contractor; or (v) for any other reason by not less than sixty (60) days notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a written notice of termination specifying the extent to which the contract is terminated, the reason therefor if under (i), (ii), (iii) or (iv) above, and the effective date of the termination.

(b) This contract may be terminated by the Contractor at any time, upon not less than sixty (60) days notice to the Government, as to all of the facilities provided hereunder. Such termination shall be effected by delivery by the Contractor to the Contracting Officer of a written notice of termination specifying the date on which termination shall become effective. The Contractor may also, by agreement with the Contracting Officer, effect a partial termination of this contract with respect to any portion of the facilities provided hereunder. Termination at the option of the Contractor shall not relieve the Contractor of any of its obligations or liabilities under any other Government contract.

(c) (1) Commencing within five (5) days after the effective date of a total or partial termination of this contract the Contractor shall promptly inspect and make a physical inventory of the property affected by the termination. The Contractor shall furnish the Contracting Officer a written report in the form and within the period specified by the Contracting Officer which shall account for such property, show the condition thereof, specify any items missing, and shall set forth any facts which may relieve the Contractor from liability for items which are missing or not in as good condition as when received or restored.

(2) The Contractor shall protect the property, and shall ship, place in storage, sell, or otherwise dispose of the property as directed or authorized by the Contracting Officer. Where property is to be shipped or placed in storage, it shall be prepared for shipment or storage in accordance with the applicable provisions of Military Specification MIL-P-4574A (USAF), as amended or supplemented from time to time. Any proceeds realized from the sale, retention or other disposition of the property shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or paid to the Government in the manner directed by the Contracting Officer.

(3) At any time after the expiration of the Plant Clearance period, as defined in Section VIII of the Armed Services Procurement Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and condition, 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 remove such items 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. The Government shall have a corresponding right, upon reasonable notice, to remove and place in storage for the work and the making of all further commitments thereon. The Contractor and the Contracting Officer shall negotiate an amount that will reasonably compensate the Contractor for the actual cost, if any, incurred by it with regard to such terminated items. If no such agreement is reached within thirty (30) days after the date of termination (or within such longer period as may at any time be mutually agreed upon), the Contractor shall be paid an amount if any, as determined by the Contracting Officer, which together with all sums previously paid by the Government on account of the items, shall be sufficient to reimburse the Contractor for expenses paid and the settlement of any obligations incurred by the Contractor thereon. In lieu of reimbursing the Contractor for the settlement of such obligations the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. In no event shall the aggregate of reimbursement on account of the items (and of all payments previously made) together with the amount of any obligations assumed, exceed the actual costs expended or incurred thereon up to the time of such termination. Upon payment to the Contractor pursuant to this paragraph (d) title to all materials, supplies, work in process and other things for which payment is made (except such property as may be sold or retained as provided in (c) (2) above) shall vest in the Government (if title thereto has not already vested in the Government). The Government shall also be entitled to any account of the Contractor any property, title to which is not in the Government, which has not been removed from any Government-owned plant or building provided hereunder at the time of the surrendering of possession thereof.

(4) Upon agreement with the Contracting Officer the Contractor may prepare and ship the terminated facilities in accordance with the Schedule and receive reimbursement as provided therein. For any allowable expenses (direct and indirect) incurred by the Contractor in the performance of (1), (2) and (3) above and not so reimbursed, the Contractor and the Contracting Officer shall negotiate settlement in an amount which will reimburse the Contractor for all such allowable expenses to the extent that performahce was directed or authorized by the Contracting Officer.

(5) Unless specifically provided herein the Government shall not be under any obligation to restore or rehabilitate or repay the costs of restoration or rehabilitation of Contractor's plant or any portion thereof which is affected by the removal of any Government property provided under the terms of this contract.

(d) In the event any facilities are to be purchased or constructed hereunder by the Contractor on behalf of the Government, upon termination hereunder by the Government of any such purchased or constructed facilities prior to the completion thereof, the Contractor shall stop all further rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed the Contractor.

(e) The Contractor shall if so directed by the Contracting Officer, use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices authorized by the Contracting Officer, facilities or other property with respect to which the contract is terminated. The Contracting Officer may permit the Contractor to retain any of such property at prices or on terms agreed to by the Government. The proceeds of any such sale or retention less selling expense approved by the Contracting Officer shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or paid in any other manner as the Contracting Officer may direct.

§ 1007.2703–14 *Public liability, insurance.* Insert the following clause:

LIABILITY, INSURANCE

(a) The Contractor shall hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities provided hereunder, except that any claim arising out of or related to the performance of any contract between the Contractor and the Government for supplies or services, or any subcontract approved by the Government under any Government prime contract, and involving the possession and use of the facilities provided hereunder, shall be governed by the provisions of such contract or subcontract.

(b) If this contract calls for labor to be performed, the costs of which are reimbursable hereunder, the Contractor shall carry workmen's compensation and public liability insurance and, to the extent applicable, automobile liability insurance, together with such other insurance as the Contracting Officer may direct.

§ 1007.2703–15 *Taxes and utilities.* Insert the following clause:

TAXES AND UTILITIES

(a) The Contractor agrees to pay, when and as the same become due and payable, all taxes, assessments and similar charges which at any time prior to the final settlement of this contract are properly and legally taxed, assessed or imposed upon the Contractor's interest made or created pursuant to the provisions of this contract, with respect to part or all of the facilities provided hereunder or the use thereof.

(b) The Contractor agrees to pay all claims or charges for or on account of water, light, heat, power, and any other services or utilities furnished to or with respect to the site, buildings, machinery, and equipment, or any part thereof.

(c) (1) The Government agrees, upon request of the Contractor, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any tax or duty upon the performance of the work called for by the attached Schedule for which the Contractor is entitled to be reimbursed under such Schedule; and the Contractor agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (i) promptly to notify the Contracting Officer of such refusal, (ii) to cause the tax or duty in question to be paid in such a manner as to preserve all rights to refund thereof, and (iii) if so directed by the Contracting Officer, to take all necessary action, in cooperation with and for the benefit of the Government, to secure a refund of such tax or duty.

(2) If, following the reimbursement of the Contractor for any tax or duty paid by him pursuant to the terms of this contract, the Contractor becomes entitled to a refund in whole or in part of such tax or duty, including interest, if any, the Contractor agrees to notify the Contracting Officer promptly of such fact and to pay over the amount of such refund to the Government or to credit such amount against amounts due from the Government under this contract; provided, that the Contractor shall not be required to apply for such refund unless so requested by the Contracting Officer.

§ 1007.2703–16 *Reports to be furnished.* (a) In contracts with nonprofit research and development contractors, insert the following clause:

REPORTS TO BE FURNISHED

The Contractor shall periodically furnish to the Government, upon written request, AMC Form 87 properly completed to set forth the indicated information regarding the subject matter of this contract.

(b) In contracts with other than nonprofit research and development contractors, insert the following clause:

REPORTS TO BE FURNISHED

The Contractor shall periodically furnish to the Government, upon written request, AMC Form 87 properly completed to set forth the indicated information regarding the subject matter of this contract, and, insofar as it is able, shall also furnish to the Government, upon written request, such reports, estimates and other information regarding the subject matter of this contract as the Contracting Officer finds necessary and reasonable, including records and data with respect to such facilities required by the Contracting Officer for industrial planning or other purposes. Requests for such reports, estimates and other information shall set forth the nature of the information sought and the form in which such information is to be furnished.

§ 1007.2703–17 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2703–18 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2703–19 *Walsh-Healey Public Contracts Act.* Insert the clause set forth in § 12.604 of this title.

§ 1007.2703–20 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.2703–21 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2703–22 *Covenant against contingent fees.* Insert the following clause:

COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to require the contractor to pay, in addition to rental or other consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1007.2703–23 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.2703–24 *Reservation of rights.* Insert the following clause:

RESERVATION OF RIGHTS

The failure of the Government to insist in any instance upon the performance of any of the terms, covenants, or conditions of this agreement shall not be construed as a waiver or a relinquishment of the future performance of any term, covenant, or condition, and the Contractor's obligations with respect to such performance shall continue in full force and effect.

§ 1007.2703–25 *Loading, blocking, and bracing requirements.* Insert the following clause:

LOADING, BLOCKING, AND BRACING REQUIREMENTS

If this contract provides for shipment by rail of supplies being delivered to the Air Force or to an Air Force contractor for use in the performance of an Air Force contract, the Contractor shall observe as minimum requirements the methods for loading, blocking and bracing shipments in or on railroad cars as set forth in appropriate loading rules pamphlets of the Association of American Railroads, except that other methods in general use providing equivalent or superior protection may be substituted for recommendatory methods set forth in those pamphlets. The Contractor will secure Loading Rules Pamphlets from the Secretary, Loading Rules Committee, Association of American Railroads, 50 East Van Buren Street, Chicago 5, Illinois. If the Contractor desires to use carloading methods other than those prescribed by the Association of American Railroads which will provide adequate or superior protection, he will submit a full explanation of such method to and receive approval from the Contracting Officer before shipment.

§ 1007.2703–26 *Notice to the Government of labor disputes.* Insert the clause set forth in § 7.105–3 of this title.

§ 1007.2703–27 *Notice and assistance regarding patent infringement.* According to the requirements of § 9.104 of this title, insert the clause set forth in that section.

§ 1007.2703–28 *Reporting of royalties.* According to the requirements of §§ 9.110 or 9.110–2 of this title, insert the appropriate clause set forth therein.

§ 1007.2703–29 *Authorization and consent.* According to the requirements of § 9.102–1 of this title, insert the clause set forth in that section.

§ 1007.2703–30 *Patent indemnity.* Insert the following clause:

PATENT INDEMNITY

(a) If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or component parts thereof, or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government, of such supplies, construction work, or component parts thereof, which supplies or component parts normally are or have been sold or offered for sale by the Contractor to, and which construction work is of a type normally performed by the Contractor for, the public in the open commercial market, or are such supplies, construction work, or component parts thereof with relatively minor modifications made thereto, or as to which the Contractor would customarily indemnify the purchaser.

(b) The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulation to participate in the defense thereof; and further such indemnity shall not apply if: (1) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered, or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies or components furnished or construction work performed, which addition or change was made by other than the Contractor subsequent to delivery or performance under this contract by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor; unless required by final decree of a court of competent jurisdiction.

(c) The Contractor shall exert all reasonable efforts to negotiate for the inclusion in every subcontract hereunder of a Patent Indemnity clause substantially the same as this clause. In the event of refusal by a subcontractor to accept this Patent Indemnity clause, the Contractor shall notify the Contracting Officer, or his designee, of such refusal and shall not proceed with the subcontract without the written authorization of the Contracting Officer. In the absence of such authorization, the Contractor shall cooperate with the Goverment in the negotiation with such subcontractor of an acceptable Patent Indemnity clause. In no event, shall a subcontractor be required by the Contractor to accept a Patent Indemnity clause, the provisions of which are more favorable to the Contractor than the provisions of the Patent Indemnity clause in this contract are to the Government.

§ 1007.2704 *Clauses to be used when applicable.*

§ 1007.2704–1 *Labor standards for construction work.* If performance of the contract will involve any construction within the meaning of the statutes referred to in the clause below, the cost of which may be reimbursable by the Government, the following clause will be inserted:

LABOR STANDARDS FOR CONSTRUCTION WORK

(a) In the event that construction, alteration or repair (including painting and decorating) of public buildings or public works is to be performed hereunder Contractor shall include in each request for the approval of said items required by the Schedule a request for a determination by the Contracting Officer as to the applicability of the Davis-Bacon and Copeland Acts, and shall not perform any of said items hereunder without receipt of such determination.

(b) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work containing a brief description of the work involved including the location thereof and a list of the types of laborers and mechanics required for such work. Upon receipt of such request the Contracting Officer shall, as soon as possible, obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered exhibits to this contract. Upon publication thereof such exhibits shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (c) (1) (A) of this clause. Each such exhibit shall indicate to what work the rates set forth therein shall apply including the period of time within which subcontracts subject to such rates may be issued.

(c) Contractor shall in the performance of items of work so determined to be subject to the Davis-Bacon Act comply with the following statutory provisions and Department of Labor regulations:

(1) Davis-Bacon Act (40 U. S. C. 276a—276–a–7).

(A) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act ("Anti-Kickback") Regulations (29 CFR, Part 3)) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(B) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by subparagraph (1) (A) of this paragraph, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(C) Subparagraphs (1) (A) and (1) (B) of this paragraph shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract under such prime contract.

(ii) Eight-hour laws—Overtime compensation.

No laborer or mechanic doing any part of the work contemplated by this contract in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this subparagraph. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this subparagraph a penalty of $5 shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this subparagraph and all penalties thus imposed shall be withheld for the use and benefit of the Government: Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws as set forth in 40 U. S. C. 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

(iii) Apprentices.

Apprentices will be permitted to work only under a bona fide apprenticeship program registered with the State Apprenticeship Council which is recognized by the Federal

Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

(iv) Payroll records and payrolls.

(A) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U. S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(B) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government Prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

(v) Copeland (Anti-Kickback) Act—Nonrebate of wages.

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

(vi) Withholding of funds to insure wage payment.

There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government Prime Contractor.

(vii) Subcontracts—Termination.

The Contractor agrees to insert the provisions of this paragraph (c) of this clause in all subcontracts and the Contractor further agrees that a breach of any of the requirements of this clause may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(d) Upon determination that the Copeland Act is applicable to items of work costing $2,000 or less, the Contractor shall comply with the provisions of subparagraphs (c) (ii), (v) and (vii) hereof, except that the first sentence of subparagraph (vii) shall be deemed for this purpose to refer only to the subparagraphs entitled "Eight-Hour Law—Overtime Compensation," "Copeland (Anti-Kickback) Act—Nonrebate of Wages," and "Subcontracts—Termination."

§ 1007.2704–2 *Gratuities.* According to the requirements of § 7.104–16 of this title, insert the clause set forth in that section.

§ 1007.2704–3 *Negotiated overhead rates.* Where negotiated overhead rates pursuant to Subpart G, Part 3 of this title are to be used, insert the clause set forth in § 7.204–16 of this title, deleting from the first sentence of that clause the words "Allowable Cost, Fixed Fee, and Payment" and inserting in lieu thereof the word "Reimbursement;" and inserting in paragraph (c) of that clause after "Part 2" the words: ", or Section XV, Part 4 in the case of any items of construction,". In the case of contracts with nonprofit research and development institutions, reference should be made to Subpart C of Part 15 of this title, rather than Subpart B.

§ 1007.2704–4 *Military security requirements.* According to the requirements of § 7.104–12 of this title, insert the clause set forth in that section.

§ 1007.2704–5 *Priorities, allocations and allotments.* According to the requirements of § 1.308–2 of this title, insert the clause set forth in § 7.104–18 of this title.

§ 1007.2704–6 *Approval of contract.* Insert the clause set forth in § 1007.–105–2, whenever the contract requires manual approval, other than by the contracting officer, before becoming effective.

§ 1007.2704–7 *Alterations in contract.* According to the requirements of § 1007.–105–1, insert the clause set forth in § 1007.105–1.

§ 1007.2704–8 *Data and copyrights.* According to the instructions of Subpart B, Part 9 of this title, and Subpart B, Part 1009 of this chapter, insert the appropriate clauses set forth therein.

§ 1007.2705 *Additional clauses.* The following clauses may be used when desirable or necessary to cover the subject matter contained in such clauses.

§ 1007.2705–50 *General.* Any other clauses authorized by Subchapter A, chapter I of this title, according to instructions for use, may be used when necessary or desirable to cover the subject matter contained in such clauses.

Subpart BB—Clauses for Short-Form Facilities Contracts

9. Sections 1007.2802 through 1007.–2804–5 are deleted and the following substituted therefor:

§ 1007.2801 *Limitation on use.* Short-form facilities contracts will be issued only by Hq AMC. If the short-form facilities contract is with a nonprofit contractor performing only research and development contracts, alterations to the clauses authorized for such contractors in Subpart AA of this part are authorized for the corresponding clauses in this subpart.

§ 1007.2802 *Definition.* As used throughout this subpart, the term "short-form facilities contract" means a contract, separate from a supply, service, or research and development contract, whereby industrial facilities which constitute "Government-furnished property" as defined in § 13.101 (b) (1) of this title are provided to a contractor or subcontractor for use on a supply, service, or research and development contract or subcontract.

§ 1007.2803 *Required clauses.* The following clauses will be inserted in all short-form facilities contracts:

§ 1007.2803–1 *Definitions.* Insert paragraphs (a) and (b) of the clause set forth in § 7.103–1 of this title.

§ 1007.2803–2 *Facilities to be furnished.* Insert the following clause:

Facilities To Be Furnished

(a) The Government shall furnish to the Contractor the Government-owned facilities specified in the Schedule. Such facilities shall become subject to all the terms and conditions hereof upon receipt by the Contractor (unless otherwise specified in the Schedule). The Government makes no warranty, express or implied, as to the serviceability or fitness for use of the facilities so furnished; however, the Contractor shall have the right seasonably to inspect and reject such facilities for good and sufficient reason. All facilities furnished pursuant to this subparagraph (a), if not presently at the location specified in the Schedule, will be delivered to the Contractor, f. o. b. cars or carriers' equipment at such location or at the point nearest thereto that rail carrier service is available, transportation charges prepaid, as soon as practicable after the date of approval of this contract.

(b) The Government shall not be liable to the Contractor under this contract for damages or loss of profits by reason of nondelivery, or delay in delivery, of any or all of the facilities to be provided by the Government hereunder; however, a specific provision for an appropriate equitable adjustment, to include, without limitation, price and time of delivery, may be included in any supply, service, or research and development contract which may be affected by any such nondelivery or delay.

§ 1007.2803–3 *Reports to be furnished.* Insert the clause set forth in § 1007.2703–16 (b).

§ 1007.2803–4 *Use and charges therefor.* Insert the appropriate one of the clauses set forth in §§ 1007.2703–12 (a) or 1007.2703–12 (b).

§ 1007.2803–5 *Taxes and utilities.* Insert paragraphs (a) and (b) of the clause set forth in § 1007.2703–15.

§ 1007.2803–6 *Access.* Insert paragraph (h) of the clause set forth in § 1007.2703–2 (a).

§ 1007.2803–7 *Property control records.* Insert paragraph (c) of the clause set forth in § 1007.2703–2 (a).

§ 1007.2803–8 *Termination.* Insert paragraphs (a), (b), (c) (1), (c) (2), (c) (3), (c) (5), and (e) of the clause set forth in § 1007.2703–13 and reletter the paragraphs as (a), (b), (c), (d), (e), (f), and (g), respectively.

§ 1007.2803–9 *Continuing plant clearance.* Insert the following clause:

Continuing Plant Clearance

(a) The Contractor shall notify the Contracting Officer whenever any Government property provided hereunder (i) is excess to the requirements of the using Government contracts, or (ii) is worn out, obsolete, dam-

aged or otherwise unserviceable (whether or not under circumstances rendering the Contractor liable therefor). Such property may be disposed of or allowed to remain with the Contractor under this contract at the option of the Contracting Officer, except that with respect to severable property in privately owned plants the Contracting Officer shall order the disposition of such property within 120 days of such notification if he determines that they would interfere with the Contractor's use of the plant.

(b) Any sale or retention by the Contractor of facilities to be disposed of under this clause shall be in accordance with paragraph (d) of the Termination Clause of this contract.

(c) Upon disposition, or other agreement with the Contracting Officer satisfactorily accounting for all of the property provided hereunder, this contract will be considered completed without further termination action.

(d) The Government may, but is not obligated to replace any property disposed of pursuant to (1) above.

§ 1007.2803–10 *Disputes.* Insert the clause set forth in §7.103–12 of this title.

§ 1007.2803–11 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.2803–12 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title.

§ 1007.2803–13 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.2803–14 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.2803–15 *Covenant against contingent fees.* Insert the following clause:

COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to require the contractor to pay, in addition to rental or other consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1007.2803–16 *Inspection and audit.* Insert paragraph (a) of the clause set forth in § 1007.4023.

§ 1007.2803–17 *Loading, blocking, and bracing requirements.* Insert the clause set forth in § 1007.2703–25.

§ 1007.2803–18 *Title and possession.* Insert the following clause:

TITLE AND POSSESSION

Title to all property furnished by the Government shall remain in the Government. Title to the Government property shall be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. Except as otherwise specifically provided in this contract, the Contractor (i) shall not pledge, assign, or transfer title to any Government property, nor do or suffer anything to be done whereby any Government property may be seized, taken in execution, attached, destroyed or injured, and (ii) shall not remove or otherwise part with possession of, or permit the use by others of any Government property.

§ 1007.2803–19 *Liability.* Insert paragraph (g) of the clause set forth in § 1007.2703–2 (a) with the following revisions:

(a) Delete the second sentence of subparagraph (3) thereof.

(b) In the second sentence of subparagraph (4) thereof, delete the phrase "paragraph (f)" and insert in lieu thereof the word "clause."

§ 1007.2803–20 *Maintenance.* Insert paragraph (e) of the clause set forth in § 1007.2703–2 (a), deleting from the second sentence thereof the phrase ", as referred to in 'f' below,".

§ 1007.2803–21 *Public liability, insurance.* Insert paragraph (a) of the clause set forth in § 1007.2703–14.

§ 1007.2803–22 *Reservation of rights.* Insert the clause set forth in § 1007.-2703–24 and add, "It is agreed that nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed hereunder and not reimbursable hereunder."

§ 1007.2803–23 *Cost for packing, shipment, or storage.* Insert the following clause:

COST FOR PACKING, SHIPMENT, OR STORAGE

The Government shall reimburse the Contractor for the cost incurred by the Contractor for such packing, shipping, or storage of facilities provided under this contract as the Contracting Officer may direct in writing, such reimbursement to be made subject to the following provisions:

(a) *Reimbursement.* Insert the clause set forth in § 1007.2703–7 according to the instructions contained therein, and with the following changes:

(1) Substitute the following paragraph (a) in lieu of paragraph (a) thereof:

(a) Costs for which the Contractor is entitled to be reimbursed under this contract, hereinafter referred to as "allowable costs" shall be determined by the Contracting Officer to be allowable in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(2) Omit the second sentence in paragraph (c) thereof.,

(3) Omit subparagraph (e) (3) thereof.

(b) *Limitation of costs.* Insert the clause set forth in § 1007.2703–8.

(c) *Subcontracts.* Insert the clause set forth in § 1007.2703–3 according to the instructions contained therein.

(d) *Cancellation of subcontracts.* Insert the clause set forth in § 1007.2703–6.

(e) *Records.* Insert the clause set forth in § 1007.2703–9 according to the instructions contained therein.

(f) *Assignment of claims.* Insert the clause prescribed by § 1007.2703–10.

(g) *Public liability, insurance.* Add paragraph (b) of the clause set forth in § 1007.2703–14 to the clause prescribed by § 1007.2803–21.

(h) *Government bills of lading.* Insert the following clause:

GOVERNMENT BILL OF LADING

Upon total or partial termination of this contract, any transportation of Government facilities from the place where such facilities are located, or the point nearest thereto that rail carrier service is available, shall be by Government Bill of Lading. The required number of such GBL's will be furnished to the Contractor by the cognizant transportation activity. The Contractor shall acknowledge receipt of these GBL's in the manner prescribed. As shipments are made, the Contractor shall prepare and distribute the applicable GBL's in accordance with AMC Form 232, "Instructions for Completing U. S. Government Bill of Lading." The Contractor also agrees that GBL's in excess of the requirements of this contract will be returned to the cognizant transportation activity within a reasonable time after final shipment.

(i) *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.2804 *Clauses to be used when applicable.*

§ 1007.2804–1 *Approval of contract.* Insert the clause set forth in § 7.105–2 of this title whenever the contract requires manual approval other than by the contracting officer before becoming effective.

§ 1007.2804–2 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.2804–3 *Alterations in contract.* According to the requirements for use of § 1007.105–1 of this chapter insert the clause set forth in § 7.105–1 of this title.

§ 1007.2804–4 *Data and copyrights.* According to the instructions of Subpart B, Part 9 of this title, and Subpart B, Part 1009 of this chapter insert the appropriate clauses set forth therein.

10. Sections 1007.2904–1, 1007.2904–2 and 1007.2905–6 (a) are deleted and the following substituted therefor:

§ 1007.2904–1 *Cover page.* The following will be the arrangement and provisions of the cover page for leases of machine tools and other production equipment.

Contract No. ------

FACILITIES LEASE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA (DEPARTMENT OF THE AIR FORCE (LESSOR) AND

(Lessee)

(Address)

Issuing office:
Address:
Contract for: Lease of Machinery and Equipment.
Administrative data: Office of USAF Administration: The ---
will have overall administrative responsibility for this lease.
This lease has been authorized under Section 2667, of Title 10, United States Code.

§ 1007.2904–2 *Introductory recitals.* The following will be the introductory recitals for leases of machine tools and other production equipment.

GOVERNMENT-OWNED EQUIPMENT RENTAL AGREEMENT

This Agreement, entered into this ------ day of ---------- 19--, by the United States of America, hereinafter called the Government represented by the Contracting Officer

executing this lease, and _____, a corporation organized and existing under the laws of the state of _____, and having its principal office at _____, hereinafter called the lessee, WITNESSETH THAT;

Whereas the Government is the owner of certain machine tools and other items of production equipment under the control of the Department of the Air Force which are listed on Appendix "A" annexed hereto, herein sometimes designated as the "leased property";

Whereas it has been determined that such machine tools and other items of production equipment are not excess property, as defined by Section 472 of Title 40, United States Code, but are not for the time being needed for public use;

Whereas in the judgment of the Secretary of the Air Force the execution of this lease will promote the national defense and will be advantageous to the Government;

Whereas this lease is made under the authority of Section 2667 of Title 10, United States Code;

Now, therefore, the parties do mutually agree as follows:

§ 1007.2905–6 *Rental.*

RENTAL

(a) The lessee shall pay rent for the leased property at the monthly rental specified in the Appendix "A". Such rent shall begin with respect to said item at the beginning of the term of this lease as set forth in Clause II hereof or upon date of delivery of such item to the lessee whichever is later and shall continue to the date on which this lease expires or is terminated with respect to said item or items of leased property; provided, however, that such rental shall commence upon the date when the item is placed in a usable condition in those cases wherein an item is unusable as a result of need for repairs and/or parts replacements at the time when rental would otherwise begin. Rent accruing during the month of delivery of any item or items of leased property and the month in which such item or items of leased property are returned to the Government shall be prorated on the basis of a thirty-day month. Rental payments shall be made for rental due and owing for each calendar quarterly period during the term of this lease not later than the 10th day of the month following such calendar quarter. Said rental payment shall be made by check payable to the Treasurer of the United States and shall be mailed or delivered to the Contracting Officer or such other person as may be designated by the Contracting Officer for transmittal to the appropriate accounting officer, accompanied by a statement in triplicate explaining the amount of each payment.

11. Section 1007.2905–20 is deleted and the following substituted therefor:

§ 1007.2905–20 *Covenant against contingent fees.* Insert the following clause:

COVENANT AGAINST CONTINGENT FEES

The lessee warrants that no person or agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay, in addition to the rental or other consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12. Sections 1007.3103 and 1007.3103–11 are deleted and the following substituted therefor:

§ 1007.3103 *Required clauses.* All construction contracts, except those executed on AFPI Forms of the 79 series and those executed by foreign procurement activities (see § 1007.4206) will consist of Standard Form 23, "Construction Contract," the clauses contained in Standard Form 23A, "General Provisions (Construction Contracts)," (see Subpart D, Part 16 of this title and Subpart D, Part 1016 of this chapter), and, in addition, the following additional general provisions, which will be serially numbered beginning with the number 27 to follow the numbering of Standard Form 23A.

13. Sections 1007.3104–7, 1007.3104–8, 1007.3104–9, 1007.3106–1, 1007.3106–2, 1007.3106–7, and 1007.3106–8 are deleted and the following substituted therefor:

§ 1007.3104–9 *Data and copyrights.* According to the instructions of Subpart B, Part 9 of this title and Subpart B, Part 1009 of this chapter insert the appropriate clauses set forth therein.

§ 1007.3106–1 *Description of work.*

(c) *Quantity.* (This paragraph is applicable to all unit price contracts but is inapplicable to all lump-sum contracts.) The Contractor may reasonably expect a variation in the estimated quantity set forth in the Schedule such that the total payment for the completed work may range from 90 percent to 110 percent of the total amount stated on the Standard Form 23 attached hereto. The Contractor will be required to complete the entire work as set forth herein subject to the allotment of sufficient funds to the contract: Provided, (1) the Contractor is not authorized to perform work the cost of which will exceed the amount stated on Standard Form 23 attached hereto without the prior written authorization of the contracting officer, and (2) if the completed work ranges from 90 percent to 110 percent of the estimated quantities set forth in the Schedule, the Contractor will be allowed no claims for anticipated profits or loss of profits or for damage of any sort because of differences between the estimate of any item and the amount of any item actually required, and (3) if work less than 90 percent or more than 110 percent of the estimated quantities set forth on the Schedule causes an increase or decrease in the unit price or prices there may be an adjustment of such prices in accordance with the procedures of the Changes clause.

§ 1007.3106–2 *Scope of work.*

SP 1–02 SCOPE OF WORK

All work which is manifestly necessary to carry out the interest of the drawings and specifications or which is customarily performed for such work shall be performed by the Contractor. Any requirement shown on the drawings, but omitted from the specifications, or any requirements shown in the specifications but omitted from the drawings shall be considered as being required under the contract as if set forth in both. Any change in drawings or specifications directed by the Contracting Officer shall be made in accordance with the clause hereof entitled: "Changes."

§ 1007.3106–7 *Progress charts, Sundays, holidays and nights.*

SP 1–07 PROGRESS CHARTS, SUNDAYS, HOLIDAYS AND NIGHTS

(a) The Contractor shall within five (5) days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for approval a practicable and feasible schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant, and equipment) and the contemplated dates for completing them. The schedule shall be submitted on AFPI Form 78, "Construction Contract Progress Schedule," in accordance with the instructions printed on the reverse side of the form. The Contractor shall submit to the Contracting Officer at the end of each week a brief written report of the percentage of work accomplished for each work element during that week, or at such other intervals of time as may be established by the Contracting Officer.

§ 1007.3106–8 *Standard test, quality and guarantees.*

SP 1–08 STANDARD TEST, QUALITY AND GUARANTEES

(a) Tests or trials to determine the effectiveness of performance of a completed assembly or fabricated system shall be made by the Contractor, without cost to the Government.

(b) All articles and supplies, and equipment, parts and assemblies thereof, of standard manufacture, or for which detail design or requirements are not prescribed in these specifications, shall be guaranteed by the Contractor against any failure in the proper use or operation caused by defective material, workmanship, or design for a period of one (1) year from date of final acceptance of the complete work under this contract. Failure in any part due to such causes within that time shall be promptly and satisfactorily remedied by the Contractor without cost to the Government.

14. Section 1007.3303–22 is deleted and the following substituted therefor:

§ 1007.3303–22 *Invoicing and payment.* Insert the following clause:

INVOICING AND PAYMENT

The Contractor shall be paid at the end of each calendar month (or more frequently if the Contracting Officer finds that conditions so warrant) upon the submission of invoices or vouchers in quadruplicate, at the unit prices set forth in the Schedule. Invoices shall be typewritten or made out in indelible pencil or ink and submitted to the Contracting Officer.

15. Section 1007.3602 is added as follows:

§ 1007.3602 *Definition.* As used throughout this subpart, the term "contract for the care of remains" means any contract for the procurement of services for care of remains of deceased personnel for whom services may be ordered by the Government.

16. Section 1007.3603 is deleted and the following substituted therefor:

§ 1007.3603 *Schedule.* The following will be used as the schedule for contracts for care of remains and will be completed with appropriate information.

SCHEDULE

(Contract for Care of Remains)

PART 1—SUPPLIES, SERVICES AND TRANSPORTATION TO BE FURNISHED

The Contractor shall furnish to the Government such supplies, services and transportation described in this Schedule as may be called for by the Contracting Officer during the contract period.

a. Contract period. The contract period shall extend from _____ through _____.

b. Area of performance. This contract is established to provide for care of remains in the area within a radius of 30 miles of the contractor's establishment. The contractor will from time to time be required to go beyond the 30-mile radius in performance of this contract. When required to go beyond the 30-mile radius the contractor will be paid on a per loaded mile basis for the distance traveled outside of the 30-mile radius.

c. Personnel exceptions. Except as provided below, the supplies, services and transportation described below are for care of remains of deceased personnel for whom services may be ordered by the government. Exceptions: _____

_____

(State exceptions, or if none, so state)

d. Using activities. Using activities, in addition to the installation making this contract, are as follows:

_____

_____

e. Invoices for payment shall be submitted to:

_____

_____

f. Supplies, services and transportation.

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
1	For a Type I Casket, supplies, services, and all transportation within a 30-mile radius of the contractor's establishment, in accordance with Specifications A, B, C, and D of Part III.	.....	.....	EA	
2	For a Type II Casket, supplies, services, and all transportation within a 30-mile radius of the contractor's establishment, in accordance with Specifications A, B, C, and D of Part III.	.....	.....	EA	
3	For transportation in a suitable funeral coach, ambulance, service car and/or passenger car when required to go beyond the 30-mile radius of the contractor's establishment, in accordance with Specification E of Part III.	.....	.....	EA (loaded mile).	

If an AF Aerial Port of Entry is to be a using activity, the following will be added as an addendum to the Schedule:

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
4	For a Type I Casket, Shipping Case, touch-up services and removal of remains to the place where services will be performed in accordance with Specifications B, C, and F of Part III.	.....	.....	EA	
5	For a Type II Casket, shipping case, touch-up services and removal of remains to the place where services will be performed in accordance with Specifications B, C, and F of Part III.	.....	.....	EA	
6	For transportation of remains in a suitable funeral coach or service car from the place where services were performed to the selected carrier terminal, in accordance with Specification G of Part III.	.....	.....	EA (per loaded mile)	
7	Touch-up services only (Government will furnish casket and shipping case) and removal of remains to the place where services will be performed in accordance with Specification F of Part III.	.....	.....	EA	

Calls for Items 4, 5, or 7 of the Addendum to the Schedule will be as directed by the contracting officer.

17. Section 1007.3606 (Specification B—Casket, Metal) (a) through Specification C—Outer or Shipping Case (a) and (b) are deleted and the following substituted therefor:

SPECIFICATION B—CASKET, METAL

a. *General.* This specification provides for a standard commercial type metal casket including an innerseal when called for by the contracting Officer. For identification purposes the caskets are classified as follows:

(1) Type I—Casket, metal (hinged cap) with innerseal.

(2) Type II—Casket, metal (hinged cap) half-couch without innerseal.

b. *Standards.* The caskets furnished under the contract shall conform to the standards herein.

(1) *Design.* Each of the two types shall have top and bottom moldings, rigid handrails, square ends, and be of conventional log mold or square design in accordance with best commercial practice.

(2) *Size.* The casket shall be furnished in standard stock sizes common to the industry. In the Type I casket the minimum dimension between the innerseal and bottom shall be 16 inches.

(3) *Construction.* The casket shall consist of a lid with oval panel and top frame, body, lining assembly, (side panels, pillow, mattress or bed, throw, lid panel), handrail assembly and in the Type I casket an innerseal. The casket shall be of welded or soldered construction or a combination of both. The casket shall be constructed so as to afford only half exposure of the remains.

(a) *Hardware.* The lid, head cap and panel shall be hinged with two or more hinges and each shall be provided with supports for retaining the member in an open position and with locks to prevent movement when closed. Locks shall be as inconspicuous as possible. All hinges shall be bolted, spot-welded, or welded, or a combination of these, to the lid and the casket body.

(b) *Lid.* Lids shall be the standard hinged-head panel construction for Type I casket and the standard half-couch construction common to the industry for the Type II casket. All lids shall be formed from terneplate or stretcher leveled cold rolled steel not less than 0.0359 inch in thickness (20 gage U. S. Standard Revised).

(c) *Body.* The body shall be welded or soldered, or both, and formed from terneplate or cold rolled steel not less than 0.0359 inch in thickness (20 gage U. S. Standard Revised). The bottom panel may be fabricated from hot rolled mild steel of the same thickness. The Type I casket body shall have a top flange of sufficient bearing surface to support the rubber gasket of the innerseal. Flanges shall be fabricated from terneplate or cold rolled steel of the same thickness as the body. The casket shall be electric spot-welded and soldered for the full length of all miters. Bottom shall be spot- or tack-welded to the sides and the ends of casket body at intervals of not more than six (6) inches between welds, or lock-seamed to sides of the body. Continuous welding shall be permitted. After lock-seaming, spot- or tack-welding, the entire length and width of bottom seams shall be soldered. The bottom panel shall be constructed from one piece of metal and shall be formed either by (1) reinforcing ridges not less than $\frac{3}{8}$ inch deep, spaced not more than 8 inches apart, extending lengthwise or crosswise to the bottom; lengthwise ridges shall run to within approximately four inches of end-hand grooves, or full length, and cross-wise ridges shall run to within approximately one inch of side hand grooves; the bottom panel shall be reinforced with not less than two four-inch channel braces, welded to the inside of bottom either on or between ridges across the width, or the bottom panel may be constructed from one piece of 18 gage steel attached to the sides and ends of the casket body by continuous welding. All braces shall be welded to the hand hold groove on both sides of the bottom. Any method equal to or better than soldering and/or continuous welding may be employed to provide an airtight Type I casket. The Type II casket shall be of half-couch construction in accordance with the best commercial practice. Since the Type II casket need not be airtight, neither continuous welding nor soldering is required when the bottom panel is reinforced with the four-inch channel braces.

(d) *Handrails, handrail plates and corner ornaments.* The handrails shall be rigid type, oval design, and fabricated from terneplate or cold rolled steel a minimum of 0.017 inch thick (26 gage, U. S. Standard Revised). The handrail plates and corner ornaments shall be fabricated from terneplate or cold rolled steel, not less than 0.0359 inch thick (20 gage, U. S. Standard Revised). When supplied, each handrail plate or corner ornament shall be secured to the casket with a minimum of two bolts or studs not less than $\frac{3}{16}$ inch in diameter. Spacing of handrail plates shall be three to a side and a corner ornament used as a support for a continuous bar. The handrails shall be so constructed and attached to the handrail assembly to support the weight of the casket plus an additional equally distributed weight of 300 pounds, without buckling, pulling away from the casket or showing other signs of weakness.

(e) *Innerseal (applicable to Type I).* The innerseal shall be an interchangeable all metal innerseal, crystal glass and metal innerseal or acrylic sheet and metal innerseal. The all metal innerseal shall be formed from terneplate or cold rolled steel not less than 0.0359 inch thick (20 gage U. S. Standard Revised). The crystal glass and metal innerseal or the acrylic sheet and metal innerseal shall be formed from terneplate or cold rolled steel not less than 0.0359 inch thick (20 gage U. S. Standard Revised) and shall contain a window formed of $\frac{3}{16}$ inch acrylic sheet which shall be set in either white lead or linseed oil putty or in a synthetic or a natural rubber gasket to achieve an airtight seal. Only half exposure shall be required on the innerseal with a viewing window. The innerseal shall be fitted with a suitable gasket made of synthetic or natural rubber to fit accurately with the flange of the casket body. A suitable talc shall be placed on the rubber gasket in sufficient quantity to act as a parting agent. At least 24 cadmium plated or bronze finished clamps or screws shall be furnished to secure the innerseal to the casket and insure an airtight seal.

(f) *Welding.* All component parts to be welded shall be properly aligned into position prior to welding. Welding shall be first class. Resistance, arc, or gas welds shall be sound, free from pits, holes or fissures. Welding shall be accomplished without burning through the welded metals and calculated properly to make a sound weld. After any flash welding outside exposed flash shall be stripped entirely and no trace of the joint shall be visible after finishing. All arc or gas welds shall have full penetration and ade-

quate fusion, forming a joint of strength equal to that of the material welded. Exposed welds shall be ground and sanded flush to the original surface and shall be undetectable after finishing.

(g) *Finish.* The color of the body finish, handrails, handrail plates and corner ornaments shall be shaded silver gray (silvertone). This finish may be achieved through one of two methods.

1. *Synthetic enamel, baked.* All surfaces of metal components shall be thoroughly cleaned and given phosphate coating. A primer shall be applied to all surfaces which will be exposed after the casket is assembled, except the bottom shall be dry-sanded to a smooth finish. All exposed metal surfaces of the lid and head panel when viewed open or closed, and all exterior exposed metal surfaces of the casket, except the bottom, shall be coated with synthetic (shaded) gloss enamel.

2. *Nitrocellulose lacquer (air dry or flash dry).* All surfaces of the metal components shall be thoroughly cleaned and given a phosphate coating. A primer shall be applied to all surfaces and edges. Forced drying may be used, if desired. All exposed metal surfaces of the lid and head panel when viewed open or closed, and all exposed metal surfaces of the casket except the bottom, shall be given two coats of lacquer (shaded). This lacquer shall dry hard, sufficient for recoating in 30 minutes. All surfaces shall then be double coated with a clear lacquer. The exposed heads of screws or bolts used for assembling the casket shall be finished to correspond to the finish of the casket. The finish coat shall level out to produce a smooth and uniform flow without orange-peel, runs, wrinkles, drops, streaks or areas of thin film or no film. Buffing of the top shall be accomplished. The casket shall be weld finished, smooth, clear and free from defects which may affect the appearance or serviceability.

(h) *Upholstering.*

1. *Lining assemblies.* The lining assembly for the interior of the lid or head panel, sides of the casket, bedspread, pillow case, throw and, where applicable, the sides of the inner-seal frame, shall be lined in eggshell french crepe (no less than 60 picks per inch) or equal and backed with cotton sheeting. If head and foot panel type is used, only the head panel shall be lined. The assemblies for the head panel, bedspread, top of the pillow case and throw shall be wave crushed, tufted or shirred either by hand or machine. The interior assemblies for the sides of the casket and the innerseal, when used, shall be shirred by hand or machine to include the padded skirt or apron.

2. *Pillow.* The pillow case shall be made of domett or cotton sheeting as used in the industry, filled with 2½ pounds, plus or minus ¼ pound, of cotton or Tufflex. The pillow shall then be inserted in the pillow cover. The pillow will be not less than 22 inches long, 18 inches wide and 6 inches thick.

3. *Bed.* The bed case shall be made of domett, ticking or cotton sheeting and filled with 18 pounds, plus or minus 1 pound of clean wood wool or excelsior topped with one layer of all cotton batt (weight; 1 yard (20 inches wide) 8 to 12 ounces). Tufflex may be used in lieu of wood wool. The bed shall have a bedspread secured to the top prior to insertion into the casket. The bed shall be not less than 78 inches long, 23 inches wide and 8 inches thick.

(i) *Workmanship.* The casket shall be produced by the best means employed by those skilled in the art of metal fabrication and upholstery. All parts shall be accurately formed and properly assembled into the finished article and the casket shall be smooth, clean, well finished and free from all defects which may affect the appearance or serviceability. The Type I casket shall be capable of withstanding the water or air test as commonly practiced in the industry. A suitable talc shall be placed on the rubber gasket in sufficient quantity to act as parting agent.

SPECIFICATION C—OUTER OR SHIPPING CASE

a. *General.* This specification provides for a standard commercial type wood box to be used as an outer or shipping case.

b. *Standards.* Unless otherwise ordered each casket shall be furnished with an outer case which when used as a shipping case shall be furnished with six drop handles, two on each side and one on each end. The handles shall support the weight of the case and casket, plus an additional equally distributed weight of 350 pounds, without buckling, pulling away from the case or showing other signs of weakness. The case shall be made of 1-inch stock of thoroughly seasoned white pine, or other wood of equal quality, standard to the industry in the locality in which it is manufactured, of not less than ⅝-inch finished thickness, properly kiln-dried, free from unsound knots, checks shakes, or other defects which would impair the strength or usefulness of the case. The case shall be constructed of tongue or dovetail joints or other accepted method of fabrication common to the industry, surfaced two sides and finished thickness to be not less than ⅝-inch. The ends shall be set in with sides securely nailed thereto. Bottom shall be of cross bottom construction, and securely nailed to the ends and sides. Top shall be of cross top construction and have two top battens not less than ⅝-inch thickness and not less than 3 inches in width, running full length of box top with shaped or chamfered edges, securely nailed or screwed to the box top from underside. Top battens shall be placed 4 inches from outside edge of top. Two ⅝-inch by 2-inch cleats shall extend from the top to the full inside depth of the case at each end. Top and bottom shall be made flush with outside of sides and ends. Cement-coated nails are to be used throughout construction. All outer surfaces of the box shall be finished with two coats of steel-gray paint. Box top shall be secured to body of box with not less than eight 1¾-inch No. 10 flat head, wood screws, evenly spaced. Size of box shall be such as to allow at least 1-inch clearance between outside of casket and inside of box. A kraft paper protective shroud and pads shall be furnished to protect the casket during transit.

18. Paragraph (d) of the clause in § 1007.4015 is changed to read as follows:

(d) Unless otherwise provided herein, if any aircraft are required to be furnished to the Government hereunder and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Government in the vicinity of the Contractor's plant or plants specified elsewhere herein or in the vicinity of any other plant or plants of the Contractor approved for such purpose in writing by the Contracting Officer. Unless otherwise provided herein, such inspection and acceptance shall be accomplished in accordance with the provisions of AF Specification No. R-1800-E, as in effect on the date of this contract.

19. Section 1007.4020 is deleted and the following substituted therefor:

§ 1007.4020 *First article approval.* (a) When it is desired that the first article or articles of a contract be tested and approved, a clause providing for such testing and approval may be inserted in the contract. The delivery of the remaining articles will be scheduled for specific times after, and contingent upon, receipt of notice of approval of the first article. Provision may be made in the clause limiting the number of resubmissions of first articles after rejection caused by failure to meet specification requirements. Since the exact nature of the testing desired, and the extent to which the contractor will be authorized to proceed with production pending that testing and approval, will vary from contract to contract, establishment of a standard clause is not practicable. Set forth below is a sample provision which may be useful as a guide for fixed-price contracts. However, paragraphs (d) and (e) will be included in any such fixed-price provision.

FIRST ARTICLE APPROVAL

(a) The first (*number to be tested*) articles of Item (*contract item number*) are designated as First Articles and shall be delivered by the Contractor to the Government, all transportation charges prepaid, on or before _____ 19__, for test and approval. The Contractor will be notified, in writing, whether or not the First Articles are approved. After testing, said article shall be returned to the Contractor, at the Contractor's expense, in their then condition for submission as contract items after repairs and modifications, if necessary, have been made by the Contractor. Pending written approval of the First Articles the remaining items of the contract shall not be fabricated or produced but the Contractor may acquire necessary materials for fabrication.

(b) First Articles shall be delivered to (*set forth consignee and address to which first articles are to be shipped*).

The following marking shall be placed on the container of the First Article, below and to the left of the address:

First Articles: Contract No. _____
Item _____

Attn: (*set forth by name or symbol, and address, the laboratory or other place where the first articles are to be tested*).

(c) At least thirty (30) days prior to shipping First Articles, the contractor shall send written notice of the time and method of shipment to the Contracting Officer and to the laboratory or other place designated in (b) above where the First Articles are to be tested.

(d) If the Contractor fails to deliver the First Articles within the time set forth in (a) above or any extension thereof, the Contractor shall be deemed to have failed to make delivery within the meaning of (a) (i) of the clause hereof entitled "Default."

(e) If, following any submission or resubmission under this clause, the tests reveal discrepancies in the First Articles from the specification requirements, the Government may, at its option, either (i) terminate this contract in accordance with the terms of (a) (i) of the clause hereof entitled "Default," or (ii) notify the Contractor in writing of the discrepancies and specify an extension of the time set forth in (a) above, in which event the Contractor shall correct and resubmit the First Articles at no cost to the Government. (*End of Clause.*)

(b) Where it is desired to permit the contractor to fabricate and produce items pending approval of the first articles, the last sentence of paragraph (a) of the clause set forth above will be deleted and the following substituted:

Pending approval of the First Articles the Contractor may proceed with fabrication and production of items, but shall make no deliveries.

(c) When adapting the clause set forth in paragraph (a), above, for use in a cost-reimbursement type contract,

appropriate changes may be made. However, the following changes, at least, will be made:

(1) In paragraph (a) delete from the third and fourth lines "all transportation charges prepaid" and delete from the seventh line "at the contractor's expense."

(2) In lieu of paragraphs (d) and (e) the following paragraph will be used:

(d) In the event the Contractor fails to deliver an acceptable First Article within the time set forth in (a), above, or any extension thereof, the Government may, at its option, either (i) terminate this contract for default in accordance with the provisions of the clause hereof entitled "Termination", or (ii) notify the Contractor in writing of the discrepancies revealed between the specifications and the tendered First Article and specify an extension of the time set forth in (a), above, in which event the Contractor shall correct and resubmit the First Article.

(3) In CPFF contracts, the following phrase should be added at the end of paragraph (d): ", at no change in fixed fee."

(d) For administrative procedures relative to the contractor notification of acceptance or rejection of first article, see AFPI 54-104 (z).

20. Section 1007.4028 is deleted and the following substituted therefor:

§ 1007.4028 *Estimated requirements.* The following clause will be inserted in all contracts for the procurement of laundry or dry cleaning services (see Subpart GG of this part). The clause will also be used in requirement contracts for the procurement of (a) bakery or dairy products or packing and crating services (see Subparts FF, HH, and II of this part), or (b) other frequently procured standard commercial supplies or services where requirements are indefinite in quantity and frequency.

ESTIMATED REQUIREMENTS

(a) The quantities of supplies and services which the Government establishment issuing this contract estimates it will require during the period covered by this contract are set forth in the schedule. These quantities are estimates only and are not purchased hereby.

(b) The Contractor agrees to furnish the supplies and services, when called for by the Government, only up to the maximum quantities separately specified in the schedule. The Government, in turn, agrees to call on the Contractor for all the requirements for the supplies and services of the Government activity issuing this contract only up to such specified maximum quantities.

(c) In the event that the requirements of the Government establishment issuing this contract for the supplies and services described herein do not materialize in the quantities specified as either "estimated" or "maximum" in the schedule, such failure shall not constitute grounds for equitable adjustment under this contract, except as may be specifically provided in the schedule.

NOTE: If desired, either or both of the following points may be covered by adding an additional paragraph or paragraphs to the above clause:

(a) Limitation, in terms of percentage, the quantities which may be called for during any specified period.

(b) Limitation of the frequency of calls.

21. Section 1007.4034 is deleted and the following substituted therefor:

§ 1007.4034 *Discounts.* Any contract, under which a discount for prompt payment may be available, may contain the following clause:

DISCOUNTS

In connection with any discount offered, as may be set forth in the Schedule, time will be computed from date of the delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at those points, or from date correct invoice or voucher (properly certified, if the contract so provides, by the Contractor) is received in the office specified by the Government if the latter is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

22. Section 1007.4038 is deleted and the following substituted therefor:

§ 1007.4038 *Price warranty.* The price warranty clause, while not applicable to advertised procurements, may be used in any negotiated fixed-price contract. (See § 1003.801-9 of this chapter.) This clause is suitable for use in contracts for commercial items, or where a cost breakdown of a contractor's costs is not available. For contracts containing escalation provisions, see § 1003.403-2 of this chapter.

PRICE WARRANTY

The Contractor warrants that the prices of the items set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same items in like or smaller quantities.

23. Section 1007.4041 is deleted and the following substituted therefor:

§ 1007.4041 *Descriptive identification data to be furnished by Government suppliers.* Supply contracts issued by Hq AMC or AMC field procurement activities as a result of PR's or MIPR's which contain a requirement for descriptive identification data according to specification MIL-D-26715 (USAF) will contain clause (a) below, where such data are required for end items on the contract, and/or below, where such data are required for spare parts to be selected and furnished in accordance with a provisioning document.

DESCRIPTIVE IDENTIFICATION DATA TO BE FURNISHED BY GOVERNMENT SUPPLIERS

(a) On item No.(s) _____, the contractor shall furnish identification data in accordance with MIL-D-26715 (USAF). This service is included as an item in the contract schedule. Such data shall be delivered to the Government in accordance with the time cycle contained in the specification. No deliveries shall be made on these items until the contract has been amended to include the appropriate stock numbers. Any delay on the part of the Government to adhere to the time cycle set forth in the specification shall be considered an excusable delay within the meaning of the clause of this contract entitled "Default" or "Excusable Delays." Any such excusable delay will automatically extend the delivery schedule by the time of the delay.

(b) The contractor shall furnish identification data in accordance with MIL-D-26715 (USAF) for spare parts to be selected and furnished under provisioning procedures as established by item No.(s) _____. The price for furnishing such data shall be included in the price of said spare parts and shall be negotiated at the time and in the manner provided in this contract for the price of spare parts. Any delay on the part of the Government to adhere to the time cycle set forth in the specification shall be considered an excusable delay within the meaning of the clause of this contract entitled "Default" or "Excusable Delays." Any such excusable delay will automatically extend the delivery schedule by the time of the delay.

24. Section 1007.4048 is deleted and the following substituted therefor:

§ 1007.4048 *Ammunition and explosive material safety.* All contracts, including letter contracts, for: (a) manufacture, maintenance, modification, or overhaul of aircraft, missiles, rocket engines, and fire control systems, (b) manufacture of explosives or ammunition, and (c) any other contract that may involve the storage, manufacture, packaging, transportation, handling, or use of explosives or ammunition, will contain the following clause:

AMMUNITION AND EXPLOSIVE MATERIAL SAFETY

The Contractor shall comply with the applicable portions of Air Force Technical Orders 11A-1-20, 11C-1-6, 11W-1-2, 11W-1-3, 42B1-1-6 and AF Regulation 86-6, in effect on the date of this contract, in addition to local, State and Federal ordinances, laws and codes in the manufacture, handling, storage, packaging, transportation or use which may affect the performance of this contract of Government or Contractor owned ammunition or explosive material. The Contractor shall also comply with any additional safety measures required by the Contracting Officer with regard to such ammunition or explosive material; provided, that if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause hereof entitled "Changes."

25. Sections 1007.4051 and 1007.4052 are added as follows:

§ 1007.4051 *Special provisions relating to Air Force equipment upon which work is to be performed—(a) Requirements and indefinite quantity contracts.* The clause set forth below will be inserted in all requirements and indefinite quantity contracts in which items are furnished by the Government for repair or modification to such items. The Schedule will identify the "Air Force equipment upon which work is to be performed" as distinct from Government-furnished property to be used in the performance of such work.

SPECIAL PROVISIONS RELATING TO AIR FORCE EQUIPMENT UPON WHICH REPAIR OR MODIFICATION WORK IS TO BE PERFORMED

(a) The Contractor's liability for Air Force equipment upon which work is to be performed by the contractor pursuant to this contract shall be subject to the terms and conditions as set forth in paragraph (f) of the clause of this contract entitled "Government-Furnished* Property." However, such equipment shall not be considered Government-Furnished property within the meaning and for the purpose of any other paragraph of that clause.

(b) The Contractor shall maintain adequate property control records of Air Force

*Change 'Government-Furnished" to "Government" if the contract is a cost-reimbursement type.

equipment furnished for repair or modification in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation) as in effect on the date of the contract, which manual is hereby incorporated by reference and made a part of this contract.

(c) Title to Air Force equipment furnished for repair or modification shall remain in the Government. The Contractor shall protect such equipment in accordance with sound industrial practice. The Government shall at all reasonable times have access to the premises wherein the Air Force equipment is located.

(b) *Definite quantity contracts.* The clause set forth in paragraph (a) of this section, with the addition of paragraph (d) set forth below, will be inserted in all definite quantity contracts in which items are furnished by the Government for repair or modification to such items. The Schedule will identify the "Air Force equipment upon which work is to be performed" as distinct from Government-furnished property to be used in the performance of such work.

(d) In the event the Air Force equipment furnished for repair or modification is not delivered to the Contractor by the time or times specified in the Schedule, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price* or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

§ 1007.4052 *Use of Government facilities on no-charge basis.* Where facilities have been placed with a prime contractor under a facilities contract, which provides that use on a no-charge basis in performing Government contracts may be authorized, and it is desired to permit the use of such facilities on a no-charge basis, the following provision, completed with appropriate information, will be placed in the schedule of any negotiated supply, service, or research and development contract with that prime contractor, provided the Government receives adequate consideration and the contractor is not thereby placed in a favored competitive position. Subparagraph (b) of the following provision will be included only when: (a) the price or fee of the prime contract is negotiated on the specific understanding that the use of the facilities without charge will be permitted in the performance of the specified subcontract items by the specified subcontractors, and (b) the subcontractor is not thereby placed in a favored competitive position.

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contract _____ in effect on the date of this contract, on a no-charge basis.

(b) The following subcontractors having Government-owned facilities provided under the Facilities Contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide.

Subcontractor	*Facilities Contract No.*	*Subcontract Item*

(c) If the contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the contracting officer may authorize the use of such facilities on a no-charge basis, provided (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the contracting officer. No amendment to this contract will be required, as provided in (ii) above, if the contracting officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government.

(d) If the Government-owned facilities provided to the contractor or any subcontractor hereunder on a no-charge basis are increased or decreased during the performance of this contract, such equitable adjustment as may be appropriate will be made in the terms of this contract.

(e) The contractor agrees that it will not directly or indirectly include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the contractor for the use of the facilities referred to herein.

25. That portion of § 1007.4205–8 immediately preceding the clause, is deleted and the following substituted therefor:

§ 1007.4205–8 *Disputes.* Except as provided below, contracts issued by foreign procurement activities shall contain the clause set forth in § 7.103–12 of this title. Contracts issued by foreign procurement activities located within the geographical areas of responsibility of the Commander-in-Chief, USAFE, will contain the following clause:

* * * * *

27. Section 1007.4207–20 is deleted and § 1007.4207–2 is corrected to read § 1007.4207–21.

28. Section 1007.4210 (a) is deleted and the following substituted therefor:

§ 1007.4210 *Construction contracts—Special provisions.* (a) Insert the special provisions as set forth in § 1007.3106, except that the following special provisions will be omitted: 1–08, Standard Test, Quality and Guarantees; 1–09, Preservation of Existing Vegetation; 1–18, Shop Drawings; 1–20, Domestic Articles; 1–21, Rates of Wages. The words "U. S. Standard Form 23 attached hereto" and "Standard Form 23 attached hereto" will be omitted from SP 1–01 (a) and SP 1–01 (c) and will be replaced by "the Statement of Work on the cover sheet" and "on the cover sheet as the amount of contract," respectively. Contracting officers may omit any of the other special provisions set forth in § 1007.3106, that cannot be complied with because of local conditions. In all of these special provisions the words "United States" will be inserted before the word "Government" whenever the latter word appears.

29. Subpart VV is added as follows:

SUBPART VV—CLAUSES AND SCHEDULE PROVISIONS FOR FLIGHT INSTRUCTION OF AFROTC PERSONNEL AT CIVILIAN COLLEGES AND UNIVERSITIES

§ 1007.4802 *Definition.* As used throughout this sub-part, the term "contract for flight instruction of AFROTC personnel at civilian colleges and universities" means any contract for flight instruction of AFROTC personnel at an approved or accredited college or university, paid for on a fixed price basis.

§ 1007.4803 *Required clauses.* The following clauses will be inserted in all contracts for flight instruction of AFROTC personnel at civilian colleges and universities.

§ 1007.4803–1 *Definitions.* Insert the clause set forth in § 7.103–1 of this title.

§ 1007.4803–2 *Inspection.*

INSPECTION

The Contractor agrees (i) to permit representatives of the Government at all reasonable times to inspect the Contractor's facilities, operations, books and records in connection with this contract and (ii) to insert a like provision in any subcontract hereunder.

§ 1007.4803–3 *Disputes.* Insert the clause set forth in § 7.103–12 of this title.

§ 1007.4803–4 *Convict labor.* Insert the clause set forth in § 12.203 of this title.

§ 1007.4803–5 *Eight-hour law of 1912.* Insert the clause set forth in § 12.303–1 of this title. If the contract is with a state or a political subdivision thereof, preface the clause as directed in § 12.303–2 of this title.

§ 1007.4803–6 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title.

§ 1007.4803–7 *Officials not to benefit.* Insert the clause set forth in § 7.103–19 of this title.

§ 1007.4803–8 *Covenants against contingent fees.* Insert the clause set forth in § 7.103–20 of this title.

§ 1007.4803–9 *Gratuities.* Insert the clause set forth in § 7.104–16 of this title.

§ 1007.4803–10 *Examination of records.* Insert the clause set forth in § 7.104–15 of this title.

§ 1007.4803–11 *Termination for the convenience of the Government.* Insert the clause set forth in § 8.705–2 of this title.

§ 1007.4803–12 *Subcontracts for work or services.* Insert the clause set forth in § 1007.4030 (b).

§ 1007.4803–13 *Insurance.* (a) In connection with the operation of aircraft in performance of this contract or the flight checking of trainees hereunder by employees or representatives of the Government, the contractor or any subcontractor engaged to provide the Flight Training shall procure and maintain at all times during the performance of services under this contract Aircraft Public Liability Insurance, including coverage of

*Change "contract price" to "estimated cost, fixed fee" if the contract is cost-reimbursement type.

liability to passengers, against bodily injury and property damage. Such insurance shall be procured and maintained in limits of not less than $100,000 with respect to any one person injured or killed and, subject to that limit per person, an aggregate limit of $500,000 with respect to any number of persons injured or killed as the result of any one accident; and $100,000 per accident with respect to property damage. The liability limit with respect to passenger liability shall be not less than $100,000 per aircraft seat. This required insurance coverage shall be carried under terms and conditions which will protect the contractor, the subcontractor, and the student trainee.

(b) Each insurance policy evidencing this required insurance shall bear appropriate endorsements whereby the insurance carrier waives any rights of subrogation acquired against the United States of America by reason of any payment under such policy, and such policy shall further provide that the contracting officer will be given 30 days prior notice before cancellation of such policy or reduction of coverage thereunder can be effective.

(c) The contractor shall, prior to initiation of flight instruction under this contract, submit to the contracting officer or his duly authorized representative either (1) a certified copy of the insurance policy actually procured and maintained, or (2) an insurance certificate issued by the insurance carrier writing the insurance certifying to the existence of the required insurance coverage in conformity with this clause.

§ 1007.4803–14 *Renegotiation.* Insert the clause set forth in § 7.103–13 of this title.

§ 1007.4804 *Clauses to be used when applicable.*

§ 1007.4804–1 *Reporting of royalties.* According to the requirements of § 9.110 of this title, insert the clause set forth therein.

§ 1007.4804–2 *Approval of contract.* Whenever the contract, prior to becoming effective, requires manual approval other than by the contracting officer, insert the clause set forth in § 7.105–2 of this title.

§ 1007.4804–3 *Alterations in contract.* According to the instructions for use in § 1007.105–1, insert the clause set forth in § 7.105–1 of this title.

§ 1007.4805 *Additional clauses.* Any other clause authorized by Subchapter A, Chapter I of this title, this subchapter, according to instructions for its use, may be used when it is necessary to cover the subject matter of such clause.

§ 1007.4806 *Schedule provisions.* The following provisions will be included in the Schedule and will be completed with appropriate information prior to execution of the contract.

PART I—SERVICES TO BE PERFORMED

(a) The Contractor shall provide flight instruction to ------ students, designated by the Contracting Officer as pilot students. Such instruction shall be in accordance with the Syllabus of Instruction attached hereto as Exhibit "A".

(b) The Contractor shall furnish transportation of students to and from the place of flight instruction as may be approved by the Contracting Officer.

(c) The Contractor shall keep such technical, operational and administrative type records as may be required by the Contracting Officer.

(d) Additional hours of training per student above those prescribed in the Syllabus of Instruction shall be given only as authorized by the Contracting Officer. Such authorization shall be in the form of a Supplemental Agreement amending the contract.

(e) If, at any time, the Contractor is of the opinion that any student should be eliminated from further instruction under this contract, it shall notify the Contracting Officer and the appropriate CAA official thereof, stating its reasons therefor. However, the Contractor shall continue to provide to any such student the instruction called for by this contract unless the Contracting Officer directs the Contractor to eliminate such student from further instruction. The Contracting Officer may make such direction either (1) upon the recommendation of the CAA flight examiner or (2) upon the joint recommendations of the Contractor and the Professor of Air Science at the Contractor's institution. If the Contracting Officer directs elimination of any student from further instruction, whether or not under the circumstances described above in this paragraph (e), the Contractor shall eliminate the student from any further instruction under this contract promptly upon receipt of such direction.

(f) It is understood ground school instruction of students will be the responsibility of the Air Force, separate from flight instruction, and will be accomplished during the students' regularly scheduled AFROTC class periods.

PART II—EQUIPMENT, PERSONNEL AND QUALIFICATIONS FURNISHED BY THE CONTRACTOR

(a) Unless otherwise directed by the Contracting Officer, one ----------

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(Designate airplane model(s) and horsepower)

(with a separate and independent three-control system, i. e., rudder, elevator and aileron controls), as approved by the Civil Aeronautics Administration and the Contracting Officer, will be provided and properly maintained at all times, for each fifteen (15) students or fraction thereof receiving instruction under this contract. Such aircraft need not be used exclusively for service under this contract.

(b) Unless otherwise directed by the Contracting Officer, one flight instructor holding a currently valid Commercial Pilot Certificate and appropriate instructor's rating issued by the CAA, will be provided for each fifteen (15) students or fraction thereof receiving instruction under this contract. Such instructors need not be employed exclusively for services under this contract.

(c) The Contractor shall assign each student to an instructor who, where practicable, will be responsible for the instruction of students assigned to him during the entire course. The Contractor shall furnish the Contracting Officer with the names of the students assigned to each flight instructor.

(d) The Contractor, or its subcontractor, if flight instructions are furnished through a subcontractor, shall possess and keep currently in effect at all times during the performance of services under this contract, a Flying School Certificate with an appropriate flying school rating issued under provisions of Part 50 of the Civil Air Regulations.

(e) All operations under this contract shall be in accordance with all applicable provisions of the Civil Air Regulations, except as otherwise provided by the Air Force and the CAA under the terms of this contract.

PART III—PERIOD OF PERFORMANCE

The Contractor shall begin instructions on or before the ---------- and shall continue until the course of flight instruction for the designated students is completed.

PART IV—CONSIDERATION AND PAYMENT

(a) To perform the services called for in Part I of this contract, the Contractor will have provided ------ solo hours and ------ dual hours of flight instruction. For full payment of such services the Government will pay the Contractor the sum of $------ for each hour of solo instruction and $------ for each hour of dual instruction actually provided. Any check flight administered by CAA personnel will be paid for at the solo rate.

(b) Where a student is eliminated for any reason whatsoever prior to completion of the course of flight instruction, the Government shall be obligated to pay for only the instruction services which have been performed with respect to such student prior to the date of elimination. Elimination of any student prior to completion of the course of flight instruction shall not be considered a termination within the meaning of the clause of this contract entitled "Termination for Convenience of the Government."

PART V—LOCATION AND SUBCONTRACTING

(a) The location where flight instructions will be performed is ----------

(b) The items of services the Contractor presently estimates will be performed by subcontract are ----------

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1008—TERMINATION OF CONTRACTS

1. The following note is added at the end of § 1008.758 (b) (17), "Open End" Storage Provisions, as follows:

NOTE. The reporting requirements contained herein have been approved by the Bureau of the Budget according to the Federal Reports Act of 1942. BOB No. 21–R117.

2. Add § 1008.2003 as follows:

§ 1008.2003 *Authority to cancel for default.* (a) Within the continental United States, the authority to cancel contracts for default of the contractor will be exercised only by a termination contracting officer specifically designated to cancel contracts for default by the Chief, Readjustment Staff Division (MCPPJ), Hq AMC.

(b) Outside the continental United States, the authority to cancel contracts for default of the contractor will be exercised only by a termination contracting officer specifically designated to cancel contracts for default by the Commander, AMC, oversea commanders (except Commander FEAF), air attaches, chiefs of AF Foreign missions, Commander, MATS and CINC, SAC, in areas not within the jurisdiction of any major commander, Commander, AMFPA, and Commander, AMFEA. Whenever this part prescribes action to be taken by the Readjustment Staff Division, Hq AMC, such actions will be taken by the offices designated and authorized by the oversea commander (except Commander FEAF), Commanders, MATS, CINC, SAC, air attaches, chief of AF foreign mission, and Commander, AMFEA. In the cases of FEAF and AMFPA, actions required to be taken by this subpart to be taken by the Readjustment Staff

Division, Hq AMC, will be taken as prescribed by the Commander, AMFPA.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

PART 1009—PATENTS, COPYRIGHTS, AND TECHNICAL DATA

Sections 1009.107, 1009.107-1, 1009.-107-2, 1009.107-3, 1009.109, and 1009.110 are added as follows:

§ 1009.107 *Patent rights under contracts involving research or development.*

§ 1009.107-1 *License rights*—(a) *Exclusion of invention from the license grant.* When the contractor requests the exclusion from the grant in the Patent Rights clause of an invention pursuant to the provisions of § 9.107-1 (b) of this title, the contracting officer will obtain identification of the patent number or patent application serial number of each invention for which exclusion is sought by the contractor and obtain verification of the existence of one or more of the circumstances set forth in § 9.107-1 (b) (1), (2), (3), and (4) of this title. Where the invention is identified only by a patent application serial number, a copy of such application will be obtained from the contractor. The contracting officer will then refer the contractor's request for exclusion, together with copies of all pertinent material and a full statement of facts, to Chief, Patents Division for advice.

(b) *Contract clause.* All material received from contractors under the provisions of paragraphs (c), (d), (e), and (h) of the Patent Rights clause of § 9.107-1 (c) of this title will be processed according to the procedure set forth in Subpart K of this part. Bureau of Budget Approval Number 22-R160 authorizes submission of DD Form 882, "Reports of Inventions and Subcontracts," by contractors.

§ 1009.107-2 *Contracts relating to atomic energy.* All contractor furnished information with respect to subject inventions relating to atomic energy, received by contracting officers under the provisions of § 9.107-2 of this title, and all requests for deviations which are to be forwarded to the Atomic Energy Commission for determination as to whether the deviation may be granted, will be forwarded to the Chief, Patents Division.

§ 1009.107-3 *Patent rights under contractors' product improvement programs.* See in this connection Subpart E, Part 1059 of this chapter. When a product improvement proposal has been approved by the appropriate authority, the contracting officer will consult the Chief, Patents and Royalties Division (MCJP), Staff Judge Advocate, Hq AMC, for advice as to patent rights clauses which may be appropriate, pursuant to § 9.107-3 of this title, for inclusion in those procurement contracts under which the product improvement proposal will be carried out.

§ 1009.109 *Followup of patent rights.* The applicable system of followup is set forth in detail in Subpart K of this part.

§ 1009.110 *Reporting of royalties.* Royalty reports received under the provisions of the clause in § 9.110 of this title will be processed according to the procedure set forth in Subpart K of this part. Bureau of Budget Approval Number 22-R145 authorizes submission of DD Form 783, "Royalty Report," by contractors.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

PART 1012—LABOR

1. Section 1012.103-50 (a) (2) through (3) (iii) is deleted and the following substituted therefor:

(2) Contracting officers may support application of contractor or suppliers when relaxation of State labor standards do not conflict with applicable Federal Labor Laws, such as Fair Labor Standards Act, Walsh-Healey Act, Davis-Bacon Act, Eight Hour Law, and when all of the following circumstances are present. In case of doubt the matter will be submitted through the local staff judge advocate to the Staff Judge Advocate (MCJ), Hq AMC, for advice.

(i) If the required products or services are in short supply and failure to meet production schedules for critically needed end-items will result unless the suspension or relaxation of State labor standards is approved.

(ii) If there are no alternative sources of supply for such products or services available within the required delivery schedule.

(iii) If remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable.

(iv) If the granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(3) Air Force letters of support will be addressed to the appropriate State agency and will include:

(i) The facilities and services affected.

(ii) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the procurement schedule.

2. Sections 1012.404-2 and 1012.404-3 are deleted and the following substituted therefor:

§ 1012.404-2 *Wage determinations.* The wage determination, issued by the Department of Labor pursuant to the Davis-Bacon Act, is a schedule of the minimum hourly rates of wages to be paid laborers and mechanics employed by the contractor and his subcontractors performing work called for by the contract. It normally includes all the classifications of laborers and mechanics expected to be employed on the work. There are three types of determinations: area determinations, limited area determinations, and individual determinations.

(a) Area (54A) determinations provide wage rates for all contracts which may be awarded for work at an installation or within a given geographical area (usually a county) during the 90-day life of the determination. This type of determination contains all the classifications of laborers and mechanics usually needed for construction work and is issued only for installations where continuing construction activity is anticipated. Area determinations must be renewed on a continuous basis by submission of Department of Labor Form DB-11 to the Department of Labor approximately 30 days prior to the expiration of each current area determination.

(b) Limited area (54A) determinations: In some states, the Department of Labor does not include in the area type determination wage rates applicable to heavy or highway construction. In these states, the wage rates issued are for all classifications for "Building Construction" only. This type of determination is known as a limited area determination, and in the cases where the Department of Labor issues this type of determinations, the requesting office must submit requests for individual determinations for heavy and highway construction projects as described below. The Department of Labor will disseminate to field activities a list of those states which do not include "heavy" or "highway" construction classifications in area type determinations.

(c) Individual determinations are determinations which are provided by the Department of Labor for a single contract. Such a determination must be obtained for each contract subject to the Davis-Bacon Act unless an area (54A) determination is applicable. The classifications of laborers and mechanics in these determinations are limited to those classes employed in the type of work required by the contract, as indicated in the request.

(d) Modification and superseding determinations: During the 90-day life of a determination, the Department of Labor may issue a modification thereto, changing the wage rate for one or more classifications or adding or deleting a classification; or the Department of Labor may issue a new determination which entirely supersedes the original determination for the duration of the 90-day period. Neither modifications nor superseding determinations change the expiration date of the original determination. The date that modifications, superseding determinations, or new determinations are received in the Air Force from the Department of Labor will be the date used in determining whether the rates therein are effective. Therefore, all copies of modifications and determinations will be time-date stamped to show when they were first received by the Air Force.

(1) If the date stamped is 5 days or more before bid opening, the new rates are effective and must be included in the contract. Accordingly, bidders should be advised of the new rates by an amendment to the Invitation for Bids.

(2) If an effective modification or determination is not received by the pertinent procuring activity until after the opening of bids, the modification or determination will be given effect as follows:

(i) If there are no changes to applicable wage rates, or if there are increases which the low responsible bidder will accept without change in its bid price, award will be made to the low responsible bidder, provided that written acceptance of the new rates is obtained from the low responsible bidder and attached to the bid and that the new rates are included in the contract.

(ii) If any applicable wage rate is decreased, or if there is any decrease which the low responsible bidder will not accept without change in its bid price, award will not be made until the procurement has been readvertised using the new or modified determination.

§ 1012.404–3 *Additional classifications.* (a) If a classification is omitted in the determination, or the need for an additional classification in the determination arises prior to award of contract, an emergency request for a supplementary determination, will be sent to the Davis-Bacon Section, Department of Labor, Washington 25, D. C. The request will be made by wire and will include the following information: the applicable wage rate determination, the date issued, the name and address of the activity, the state and county where the work is to be performed, the additional classifications required and briefly, why required.

(b) If the need for additional classification arises after award of contract, the contracting officer may authorize the contractor to employ such classifications on the work providing the contractor has furnished a signed request justifying the use of additional classifications and the wage rates proposed to be paid. The contractor will submit the request to the contracting officer in triplicate. If the request is approved, one copy will be returned to the contractor, one copy will be made part of the contract records, and one copy will be sent immediately to the Davis-Bacon Section, Department of Labor, Washington 25, D. C. If the contractor and the contracting officer cannot agree on the additional classifications or the wage rates, the question will be referred to the Davis-Bacon Section, Department of Labor for resolution. A specific description of the work to be performed by the additional classifications and the recommendation or comments of the contracting officer will be furnished.

3. Sections 1012.806 and 1012.806–1 are added as follows:

§ 1012.806 *Administration.*

§ 1012.806–1 *Educational responsibility.* Contracting officers administering AF contracts will at the earliest practicable time acquaint the contractor of his responsibilities under the nondiscrimination clause. Such action will also be evidenced by submission of a letter to the contractor, with a copy of the letter placed in the contract file at the office of administration, setting forth the following:

(a) A statement that, in connection with the performance of work under the contract, award of the contract entails a contractual obligation not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin.

(b) A statement encouraging and persuading compliance by the contractor with the spirit as well as the letter of the nondiscrimination clause in his contract.

(c) A statement that included in the review of the contractor's performance will be a review of his compliance with the provisions of the nondiscrimination clause.

(d) A statement that special reviews may be conducted to measure progress in the nondiscrimination program as well as to furnish educational data in connection with the program.

(e) When applicable, statement that incorporation of the nondiscrimination clause in his first-tier subcontracts entails his furnishing such subcontractors with copies of the notice for posting.

(f) When applicable, statement that his request for copies of the notice are to be directed to the administrative contracting officer, and that the contractor has the responsibility of furnishing such notices to his subcontractors.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1013—GOVERNMENT PROPERTY

1. Section 1013.102–3 (j) (1) through (6) is deleted.

2. Section 1013.102–50 (3) (a) is added; (b) (9) and (10) are changed, and (b) (11) is added as follows:

(3) Nothing in the foregoing exceptions waives the requirement for appropriate contractual and administrative controls that will insure the prompt return of Government property upon completion of the purpose of use; the confinement of use of the property to the specific purpose for which furnished and the responsibility for such maintenance, care and inspection as is applicable to the property involved.

* * * * *

(9) Government property of the type described in § 1013.2406–1 will not be bailed when it would normally be provided under a facility contract, lease agreement, or suitable clauses in a supply or services contract.

(10) Special tooling defined in § 13.101 (e) of this title when intended for production purposes under the policies of subpart C of this part will not be bailed.

(11) Personal equipment for the use of contractor's flight personnel will not be bailed, except that which cannot be obtained commercially.

3. Section 1013.401 is deleted and the following substituted therefor:

§ 1013.401 *Award of procurement contracts.* Procurement (supply, service, research and development, etc.) contracts requiring provision of additional facilities or the use of facilities already with the contractor will be processed as follows:

(a) *Procurement contracts requiring the provision of additional facilities under separate facilities contracts.* When a procurement contract, supplement, or change is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract (either directly by the Government or by contractor acquisition at Government expense), the following clause will be inserted into the procurement contract:

(a) The terms and conditions of this contract are based on the providing to the Contractor of certain facilities. These are identified as specifically as practicable in the Schedule; are of the estimated cost therein listed; and, as determined by the Contracting Officer, may be either furnished to the Contractor directly by the Government, or the Contractor may be authorized to acquire them at Government expense. The parties agree to enter into a separate facilities contract, or to amend an existing facilities contract, as the case may be, under mutually acceptable terms and conditions, at the earliest practicable date. The separate facilities contract, or the amendment to an existing facilities contract shall be in a form prescribed by the appropriate sections of the Air Force Procurement Instruction in effect on the date such facilities contract or amendment is executed. Such facilities shall be provided on a no-charge basis in accordance with the clause of this contract entitled: "Use of Government Facilities on No-Charge Basis."

(b) It is agreed that if such facilities are not provided at the time and to the extent provided in the Schedule, an equitable adjustment shall, upon timely written request of the Contractor, be made in the terms and conditions of this contract to the extent required by the failure to provide such facilities.

NOTE: If the procurement contract does not already contain the clause set forth in § 1007.4052 of this chapter, "Use of Government Facilities on No-Charge Basis," insert the following in lieu of the last sentence of paragraph (a) of the clause above: "Such facilities shall be provided on a no-charge basis, and at the time that the facilities contract is expected this contract shall be amended to include the clause set forth in § 1007.4052 of this chapter, entitled: "Use of Government Facilities on No-Charge Basis."

(1) The estimated cost to be listed in the schedule pursuant to the above clause must include the total dollar value of the required facilities expenditures plus the acquisition cost of the items to be furnished directly from the industrial reserve or from other Government sources. The identification of the facilities required by the above clause "as specifically as practicable" requires a listing of the types of facilities to be provided, e. g., buildings, pavements, machine tools, and production, processing, handling, laboratory, or testing equipment. Such listing is to set forth the best estimated quantities of the facilities to be provided. Unless an exception to § 1013.102–3 (a) (7) has been granted, such listing will specifically provide that no items costing $500 or less will be provided by the Government except to the extent that they may be available in AF reserves. If the contract does not qualify for no-charge use of the facilities under § 13.407 of this title, the last sentence of paragraph (a) of the clause above will be appropriately revised, including where applicable, terms under which all or part of the facilities are to be provided to subcontractors performing subcontracts under the procurement contract. Where a contractor is to be permitted to obtain the benefit of the use by certain of its subcontractors of

Government facilities in the possession of such subcontractors, on a no-charge basis (as provided in paragraph (b) of the clause set forth in § 1007.4052 of this chapter), paragraph (a) of the clause above will be modified to provide such authority.

(2) The procurement contract containing such clause will be placed in effect only under the following circumstances:

(i) When the expansion has been approved by the issuance of a procurement directive or fully approved purchase request authorizing the facilities expansion described in the facilities clause.

(ii) When the facilities expansion does not exceed $100,000 and has been approved by Industrial Resources Division (MCPB).

(iii) When the authorization described in paragraph (3) below has been obtained.

(3) When acquisition of facilities will exceed $100,000, specific authorization to include a facilities clause in the procurement contract will be obtained from the Director of Procurement and Production, Hq AMC, or, while he is so acting, the person acting for the time being in the foregoing capacity.

(b) *Procurement contracts requiring the provision of additional facilities under the procurement contract, i. e., without separate facilities contract.* When a procurement contract or supplemental agreement is negotiated on the basis of providing additional facilities thereunder pursuant to § 13.402 (a) of this title (which provides that this can be done when the cumulative total acquisition cost, actual or estimated, of the industrial facilities provided to the contractor at the plant or general location involved does not exceed $50,000), the following procedures will apply:

(1) The approval of MCPBI will be obtained.

(2) The procurement contract will include the provisions set forth in § 1013.402.

(c) *Procurement contracts requiring the use of Government facilities already with the contractor.* When a procurement contract or supplemental agreement is negotiated on the basis of no-charge use of facilities which have already been provided (or are currently being provided) to the prime contractor or his subcontractors, the following procedures will apply. Where additional facilities will be provided by the Government, the buyer will follow the procedures of paragraph (a) or (b) of this section:

(1) The buyer will insert a clause in the prime procurement contract, following the procedures of § 1007.4052 of this chapter.

(2) Facilities which are authorized for use by the prime contractor will be identified by facilities contract number(s) in the contract provision.

(3) Where no-charge use of facilities is to be authorized for subcontract work which will support the prime procurement contract, the names of subcontractors, together with the respective facilities contract numbers and items to be produced, will be inserted in the procurement contract clause. If the identification of some subcontractors cannot be completed at the time of finalizing procurement contract negotiations, § 1007.4052 (c) of this chapter provides a means for subsequent authorization of any further no-charge use of Government facilities by subcontractors.

(4) No specific approvals by MCPB, Hq AMC, are required to use such clause, unless: (i) the procurement contract is for a different end item than the primary purpose of the facilities and would interfere with that primary purpose, or (ii) would require the use of the facilities beyond the anticipated date of completion of the primary purpose. The term "primary purpose" as used above is not limited to the purpose for which the facilities were originally provided but includes the purpose for which the facilities are currently allowed to remain with the contractor. In the absence of information to the contrary, buyers may rely on contractors' representations to establish these facts. When approvals are required, requests for such approvals will be addressed to Commander, AMC, attn: MCPBI, and will be supported by full justification for the proposed action according to § 1013.407.

(d) *Procurement by other DOD departments requiring the use of Air Force facilities already with the contractor.* (1) The Air Force encourages use of AF facilities by other DOD contractors and subcontractors to the extent that such use will not interfere with the primary AF purpose of the facilities and will not require the use of the facilities beyond the anticipated date of completion of the primary purpose. In such cases, use approvals may be given by the AF contracting officer administering the facilities contract involved as required by the terms of such contract. In cases of use which will interfere with the primary AF purpose or extend beyond the anticipated date of completion of the primary purpose, requests for approval for use should be addressed to MCPBI, and any approvals by MCPBI in such cases will be subject to any further approvals by the AF contracting officer administering the facilities contract required by the terms of such contract. Use in connection with procurements by other DOD Departments will be permitted on a no-charge basis if the other Department specifically requests and the facilities contract terms authorize such no-charge use.

(2) Procurements by the Air Force for other DOD Departments pursuant to the terms of MIPRs will be governed by § 1013.401 (c).

4. Section 1013.402 (a) (1) and (b) (1) is changed and the following substituted therefor:

(a) *Facilities in cost-type procurement contracts.* (1) Where existing facilities are to be furnished under the terms of a cost-type procurement contract, no separate clauses covering such facilities are required other than the Government furnished property clause set forth in §§ 13.503 or 13.506 of this title, whichever is applicable. The items of facilities will be listed and specified in the schedule as Government-furnished property.

* * * * *

(b) *Facilities in fixed-price procurement contracts.* (1) Where existing facilities are to be furnished under the terms of a fixed-price contract, no separate clauses covering such facilities are required other than the Government-furnished property clause as set forth in §§ 13.502 or 13.505 of this title, whichever is applicable. The items of facilities will be listed in the schedule as Government-furnished property.

5. Section 1013.408 is added as follows:

§ 1013.408 *Maintenance.* It is AF policy that all Government-owned industrial facilities as defined in § 13.101 (f) of this title, will be maintained at substantially the same capacity, efficiency, and standard of appearance and/or comfort for which the facilities were originally designed, or modified, consistent with current use and life expectancy. AF contracts and lease agreements require contractors to maintain a continuing program for the inspection, maintenance, and repair of facilities thereunder according to sound industrial practice. A program of this nature requires standard practices and procedures and provision of a means whereby contractor personnel are fully instructed as to their respective responsibilities regarding the contractor's approved standard maintenance techniques. The contractor's written procedures to be fully effective in every respect will encompass all types and categories of property included within the definition of industrial facilities.

(a) A sound industrial maintenance program will provide for the systematic inspection, testing, servicing, detection, and correction of incipient failures or unsatisfactory conditions, either before they occur or before they develop into major defects. This is known as preventative or recurring maintenance as differentiated from rehabilitation or nonrecurring maintenance (see Subpart Y of this part). The latter covers those projects which under sound economic principles require extensive repairs or replacement and the cost is normally capitalized in privately-owned industries. In no instance will an item be classified as a capital-type rehabilitation (nonrecurring maintenance) when the item to be replaced is economically capable of operating at its rated capacity or of performing its originally intended function.

(b) All repairs and replacement of industrial facilities required as a result of damages by an "excepted peril" as defined in § 1007.2703–2 (g), of this chapter will be handled on an emergency case-by-case basis in the same manner as a project for rehabilitation.

6. Section 1013.550 (e) is added as follows:

(e) When it is desired to permit the use of property already loaned under appropriate bailment agreement, for use in connection with other contract(s) with the same contractor, the words of the clause (a), (b) or (c) above, which pertain to the specifying of the property to be bailed, may be modified to reflect

such arrangement. In such case a reference to the applicable bailment agreement number (not the master bailment agreement number) will be made.

7. Section 1013.2000 is added as follows:

§ 1013.2000 *Scope of subpart.* This subpart establishes responsibilities and procedures for the bailment of Government property to an AF contractor under the policies set forth in § 1013.102–50.

8. Sections 1013.2002 and 1013.2003 are deleted and the following substituted therefor:

§ 1013.2002 *General.* The general guidance set forth below will be recognized in addition to the more specific procedures covered elsewhere in this subpart.

(a) The requirement for bailed property will be preplanned by the contractor and AF personnel to the fullest extent possible and requests will be submitted in a timely manner so as to avoid unnecessary situations of emergency under the prime contract.

(b) Application for bailment will be handled expeditiously by all processing and reviewing activities. In the event of receipt of an incomplete request any additional or correcting information required to properly evaluate the bailment will be obtained in a manner that will result in the least possible delay.

(c) To comply with the expressed policy that all bailments will be held to an absolute minimum, all applications will contain the fullest substantiation, in detail, evidencing that the loan of the specifically requested property by the Government is necessary to the performance of the prime contract.

(d) The bailment of aircraft will be subject to special controls and a particular responsibility of management that is confined to the major air command headquarters having jurisdiction over the bailed asset. The following activities within ARDC and AMC are the only offices authorized to coordinate with Hq USAF in connection with such matters as: (i) requesting allocation and assignment, (ii) requesting extension of period of assignment, (iii) requesting change in assignment code (purpose of loan), (iv) obtaining disposition instructions, and (v) such other matters of inventory or requirements reporting as necessary to Hq USAF and USAF Aircraft Distribution Office.

(1) For code BT aircraft; Hq ARDC, Aircraft Allocations Division, Aircraft Bailment Branch (RDSTAA), WP–AFB, Ohio.

(2) For code BC aircraft; Hq AMC, Support Division, Specialized Reports and Bailment Control Branch (MCPSCB) WP–AFB, Ohio.

(e) It is AF policy that maximum utilization of bailed assets be obtained to preclude the necessity of furnishing additional property. Towards this end, the cross utilization of bailed property controlled by different buying activities, including different commands, is encouraged, so long as such can be arranged on a non-interference basis. In such cases, the activity desiring secondary usage will obtain the written coordination and agreement of the primary controlling activity.

(f) Bailed property will be readied for and returned to the Government as soon as its purpose of use under the authorizing prime contract(s) has been completed, regardless of whether the bailment agreement indicates a longer allowable period of loan. In the case of aircraft, all steps, including contract negotiation and administration as well as project actions, will be taken on such pre-planned and advance basis necessary to avoid any delay in returning the bailed property to the Government.

(g) The term "bailment control activity" as used herein describes that activity within the procurement organization of a headquarters, assigned the functions of § 1013.2004 (c). Although the number of bailment transactions of an AMA or depot may not warrant the establishment of a separate bailment control activity, the procedures of this part will nonetheless be carried out as part of normal procurement matters.

§ 1013.2003 *Entering and processing application for bailment, or for the amendment of an existing bailment.* (a) Bailment of Government property will be requested by the contractor and formalized by the Air Force by use of application and agreement forms as appropriate to the nature of the transaction. These forms are described in § 1013.2003 (b).

(c) Applications for a new bailment, or for the addition of property to be used in connection with an existing bailment program, or for the request for authorization to modify bailed property, will be submitted by the contractor to the cognizant AF representative, by submission of the following completed forms in triplicate:

(1) Profit organizations will submit AFPI Form 22, "Bailment Agreement," AFPI Form 22A "Exhibit 'A' to Bailment Agreement," or Part I, AFPI Form 22B, "Supplemental Bailment Information."

(2) Nonprofit organizations will submit AFPI Form 22E, "Bailment Agreement for Nonprofit Research and Development Contractors," AFPI Form 22F, "Exhibit 'A' to Bailment Agreement for Nonprofit Research and Development Contractors," or Part I, AFPI Form 22B, "Supplemental Bailment Information."

§ 1013.2003 (b) *Prescribed bailment forms.*

Form No.	Purpose	For use with	To be prepared by	Forms obtained through	To be signed by
MCP 71-644—Master bailment agreement.	To establish the basic terms and conditions under which individual bailment agreements can be formalized.	Profit organizations	Hq. AMC (MCPSCB) only.	Supply channels	Contractor and contracting officers at Hq. AMC (MCPSCB).
AFPI-22—Bailment agreement.	To formalize individual bailment transactions under a master bailment agreement.	Profit organizations	Contractor	Supply channels	Contractor and cognizant buying contracting officer.
AFPI-22A—Exhibit "A" to bailment agreement.	To establish specific terms and conditions as appropriate to the bailment transaction.	Profit organizations	Contractor	Supply channels	No signature required.
AFPI-22B—Supplemental bailment information.	To record information essential to the evaluation and administration of the bailment.	Profit or nonprofit organizations.	Part I by contractor. Part II by AFR or ARDC contracting officer.	Supply channels	Part I by contractor. Part II by AFR or ARDC contracting officer.
AFPI-22C—Request and authorization for bailment.	To record data relating the bailment to the primary contract work involved.	Profit and nonprofit organizations.	Cognizant buying activities.	Supply channels	Buyer and chief of the buying division at the cognizant headquarters.
AFPI-22E—Bailment agreement for nonprofit R&D contractors.	To formalize individual bailment transactions within ARDC.	Nonprofit organizations (universities).	Hq. AMC (MCPSCB) if aircraft. ARDC contracting officer if other than aircraft.	Supply channels	Contractor and contracting officer at the buying activity for the cognizant center.
AFPI-22F—Exhibit "A" to AFPI 22E above.	To establish terms and conditions as appropriate to the bailment transaction.	Nonprofit organizations (universities).	Cognizant buying activities.	Supply channels	No signature required.
Unnumbered bailment agreement.	Individual agreement for the emergency bailment of aircraft engines.	Contractors operating U.S. registered civil aircraft.	Contracting officer at the AF Base.	To be typewritten locally. Use format in § 1013.2005–1.	Contractor and contracting officer at the AF Base.
Unnumbered bailment agreement.	Individual agreement for the emergency bailment of aircraft engines or components.	Contractors operating as civil air carriers.	Contracting officer at the AF Base.	To be typewritten locally. Use format in § 1013.2005–2.	Contractor and contracting officer at the AF Base.
AFPI-22J—Administrative amendment.	To amend an individual bailment agreement.	Profit and nonprofit organization.	Bailment activity	Supply channels	Contracting officer at the cognizant buying activity and/or bailment activity.
AFPI-22D—Bailment agreement status record.	To record the status of bailments under cognizance or administration.	Use is optional	Bailment activities or administration personnel.	Supply channels	Not applicable.

(d) AFPI Forms 22B only will be submitted by the contractor when it is desired to amend an existing bailment agreement to: (1) extend the period of loan as appropriate to the prime contract work, (2) change the authorized purpose of loan for the same prime contract, (3) permit the use of the bailed property on additional prime contracts, or (4) change the point of delivery or return of the bailed property. Requests for extension of period of bailment will be submitted through the AF representative for the approval of the buying activity only when such extensions are necessary to continue the testing or project work called for in the prime contract. Otherwise, and except for aircraft, the provisions of paragraph 2e of AFPI Form 22, will apply until the property has been disposed of. In the case of aircraft, extensions of period of loan required to prepare the aircraft for return to the Government, will be accomplished by the administrative contracting officer according to clause 12, of MCP 71-644 "Master Bailment Agreement." Requests for reduction of period of bailment may be entered by the contractor, AF representative, or the buying activity when it becomes evident that the existing term of loan is longer than the purpose of bailment justifies.

(e) AFPI Form 22G, "Administrative Amendment to Bailment Agreement," is prescribed for use by the cognizant headquarters bailment activity to amend the terms of an existing bailment agreement. It will not be used to authorize the loan of additional property under an existing bailment agreement.

(f) Bailment request and agreement forms are, by their design and wording, self explanatory. However, well intended brevity can render the forms incomplete and make it difficult to evaluate the request. In order that there will be no delay in the processing of any request, all required information should be concise but complete. The following is a general guide for preparation:

(1) Certain elements of information are requested basically for the purpose of insuring conformance with the policy of § 1013.102-50. Typical would be the description of the contractor's efforts to satisfy the property requirement through other than bailment, such as on the commercial market. Another would be an explanation of why no on-hand property, either Government or contractor owned, can be used to satisfy the prime contract need instead of loaning additional property. In substance all bailments require complete justification of need.

(2) Generally, bailments will authorize a specific purpose of use of the property. Therefore, information describing the purpose of loan will be technically complete and specific.

(3) The period of bailment should be realistically established on the basis of actual time of need plus the time it will take to ready the property for return to the Government. Too short a period of loan, with the expectation of numerous extensions, should not be inserted. Conversely, "For the duration of prime contract ------" should not be used unless the purpose of use clearly warrants such a period of bailment.

(4) Information dealing with the configuration of bailed property should be based upon agreement between the contractor and the buying activity and such agreement should be considered in the prime contract negotiation either prior to or simultaneous with the entry of the bailment request. In unusual instances when the configuration terms must be revised, similar contract negotiation should be expeditiously accomplished to avoid any delay in the return of bailed property, particularly aircraft, to the Government.

(5) The description of the contractor's facilities to maintain, care for, and service bailed property should be accurately and thoroughly indicated as provided for. These considerations are important, particularly when aircraft is involved, and affect decisions as to: (i) whether under the described capabilities and facilities, it is in the interests of the Government to approve the bailment, or, (ii) whether the contractor or the Government should assume the responsibility for maintenance and care of the property.

(6) The clauses existing in the prescribed bailment agreements are based upon policy for the loan of AF property and such clauses are not to be altered or deleted. This does not prohibit the selection of certain optional clauses which permit an alternative with respect to the placement of responsibility for technical order compliance, maintenance, etc.

(g) The signed and completed bailment application and agreement forms will be forwarded by the contractor to the AF representative.

(1) The chief or deputy chief of an APD, the AFPR or his deputy, or the cognizant administrative contracting officer will: (i) Ascertain that the individual who executed the AFPI Form 22 for the contractor is authorized to bind the contractor and (ii) recommend approval or disapproval of the proposed bailment or requests for changes in bailment agreements already in effect. This responsibility will not be redelegated. (If work is being performed under a prime contract at more than one of the contractor's plants, the AF representative at the plant where the property is required will submit such recommendations.)

9. Sections 1013.2004, 1013.2005, 1013.2005-1, 1013.2005-2 and 1013.2006 are added as follows:

§ 1013.2004 *Responsibilities.* (a) The cognizant buying activity will accomplish the following responsibilities on all bailment actions involving Government property bailed for use in the performance of prime contracts.

(1) Determine that the bailment is made pursuant to the policies set forth in § 1013.102-50.

(2) Determine the adequacy of the provisions for bailment in the prime contract or amendment thereto and, when necessary amend prime contracts to include suitable provisions to assure that the Government's interest is properly protected.

(3) Provide that the Government receives adequate consideration for making the bailment or revisions and extensions thereto during the term of and before final payment is made under the prime contract. Negotiate and issue the necessary contractual document to accomplish this purpose.

(4) After consideration of the contractor's maintenance facilities and capabilities, determine whether, under the provisions of clause 7 (b) (1) or 7 (b) (2) of MCP 71-644 the "Master Bailment Agreement," the contractor or the Government contractor is to be responsible for the maintenance of bailed aircraft.

(5) According to clause (8) of the Master Bailment Agreement, determine whether it is or is not advantageous to furnish at Government expense replacement parts necessary to support the bailed item. In the event it is determined that such support is not to be provided by the Government, notify the contractor, cognizant AFR and controlling bailment activity of such decision.

(6) If during the availability inquiry, it is ascertained that, due to the critical supply status of the item or for other reasons, special arrangements should be pre-established for the return of such property, appropriate instructions to this effect will be inserted in the bailment agreement.

(7) If the item to be bailed is aircraft or if the item to be bailed is to be modified, even though not aircraft, the buyer will coordinate with the Staff Judge Advocate, Hq AMC, Hq ARDC, AMA's or depots, as appropriate, to determine the adequacy of patent and license right provisions contained in the prime contract or amendment thereto, and, if necessary, recommend inclusion of additional provisions to be inserted in the bailment agreement.

(8) Negotiate and execute the bailment agreements.

(b) The AF organization controlling the property to be bailed (USAF Aircraft Distribution Office, supply activities, laboratories, other commands, etc.) will:

(1) Arrange promptly for shipment of property to the contractor upon receipt of a requisition or request for shipment containing such data as the quantity and nomenclature of the property to be shipped, industrial property account number, bailment agreement number, and the related prime contract number. Only cognizant bailment control activities will request or requisition property intended for bailment. Care should be exercised that preliminary inquiries of availability are not construed as requests for shipment.

(2) When it is known that aircraft is being readied for return to the Government, arrange that the recipient command or activity notifies the AF representative for the releasing contractor, by letter or electrically transmitted message, of the date that fly-away flight crews will be available, so that inspection can be accomplished immediately prior to release of the aircraft by the contractor and appropriate action can be taken to preclude failure of the contractor to release the aircraft by the specified time.

(c) The cognizant AF representative will be responsible for the following actions, in addition to those required by ASPR and AFPI, Section XIII, Appendix B and Appendix C.

(1) Assure that the contractor takes timely and preplanned actions in connection with any bailment matters which develop or are foreseeable in the prime contract performance. Such details could involve early entry of bailment applications, seeking amendment of existing bailments and/or the contemplation of any matters related to the preparation for return of bailed property.

(2) Recommend approval or disapproval of bailment applications submitted by the contractor.

(3) As appropriate to the circumstances, take coordination and followup actions with any subsequent bailment processing or control activities in order that delays associated with the handling of a submitted application, or other actions, will be held to a minimum and the contractor is kept informed of any reasons for unavoidable delay.

(4) Assure that the inspection of bailed property, including aircraft, is performed immediately after delivery to the contractor.

(5) Upon receipt of property by the contractor, immediately send a copy of the document evidencing such receipt, to the applicable AMC, ARDC, AMA, or depot bailment control activity, recording any discrepancies between the property requested, the property actually received and the property described in the related bailment agreement.

(6) Requisition replacement parts necessary to maintain bailed property provided:

(i) The Government is obligated to furnish such parts.

(ii) Furnishing the parts is determined to be in the best interest of the Government, and the contractual agreement between the parties does not require the contractor to furnish the parts. Requisitions for such replacement parts or exchange of worn-out equipment will be sent to the original source of AF supply.

(7) Approve all flights of bailed aircraft prior to take-off, subject to authorities established, and controls described, in § 1059.202 of this chapter. Ascertain that the flight is in conformance with the terms of the contract and that none other than the crew members and passengers required to perform the mission are aboard the aircraft. Where aircraft are remotely located from the office of the AF representative, approval may be granted in advance for more than one flight; however, the AF representative will make a spot check on such flights to assure that the flights are being conducted for the purpose intended in the bailment agreement. As control procedures when bailed aircraft are involved, the AF representative may require the contractor to:

(i) Present to the AF representative forecasted flight dates for accomplishing any given flight program.

(ii) Present detailed flight plans for coordination and approval before each actual flight.

(iii) Prepare alternate flight plans so flight time would not be wasted in case of failure of individual test flight equipment.

(iv) Plan for participation of personnel from other commands, as well as AMC and ARDC.

(v) Submit adequate reports after each flight and maintain close surveillance to assure expeditious handling of necessary data for AMC and ARDC (appropriate ARDC center) approval.

(8) Insure that bailed property is not used for any purpose other than authorized in the prime contract and bailment agreement, unless otherwise authorized in writing by the Air Force representative pursuant to the terms of the bailment agreement.

(9) Assure that maximum utilization, as authorized, is obtained for any bailed assets in the possession of the contractor. In the case of aircraft bailments, particular assurance will be attained that the contractor's scheduling of tests and internal coordination of project actions is planned to result in the requirement for an absolute minimum of bailed aircraft.

(10) Insure that the contractor, in a timely and efficient manner, complies with all maintenance and technical order requirements specified in the governing bailment agreement. If the use of the bailed property justifies waiver of any part of the maintenance provisions, a request for such waiver will be submitted according to AMCR 66-15, ARDCR 66-4. Maintenance responsibilities will not be waived to an extent greater than necessitated by the actual project or testing functions being performed and any responsibilities so waived will be immediately reinstated as appropriate to the progress or completion of the work.

(11) Under the provisions of the bailment agreement, authorize deviations for bailed property to be temporarily recalled from the contractor at any time during the life of the bailment to accomplish authorized AF missions by AF personnel when the bailment agreement contains a provision relieving the contractor of the responsibility for the property during the time required to complete the mission and until the property is returned to the possession of the contractor. If such deviation will require an extension of the period of bailment to accomplish the purpose for which the property was bailed, the AF representative will request an amendment be issued to extend the period of bailment according to § 1013.2003 (c).

(12) Immediately prior to the request for disposition instructions, a review will be made of the applicable bailment documents in comparison to the property available for return or disposition. If any discrepancies exist (quantity or condition), disposition will be withheld until such discrepancies have been corrected or appropriate determination has been made in connection therewith.

(13) Upon (*a*) expiration of the period of bailment, (*b*) completion of the purpose of use for which the property was loaned, or (*c*) upon completion or termination of the prime contract which the bailment supported, whichever occurs earlier, the following actions will be taken to dispose of the property:

(i) If the bailed property is aircraft, request for disposition instructions for the return of code BC aircraft will be made to MCPSCB, Hq AMC; or for code BT aircraft, to RDSTAA, Hq ARDC, W-P AFB, Ohio.

(ii) If the bailed property is other than aircraft and if instructions for the return of such property exist in the bailment agreement, a reaffirmation of those instructions will be obtained from the activity indicated therein. The reaffirmation will indicate that the activity still desires the return of the property (with other pertinent instructions, such as packaging, method of shipment, exact address, etc.) or that the activity no longer desires the property.

(iii) If the bailed property is other than aircraft and either no specific instructions exist for the return of the property or the activity indicates no requirement, according to subparagraph (ii) above, send a list of the bailed property on appropriate DD Forms 542, 543, 544, or 545, "Termination Inventory Schedule," (15 copies each) to Plant Clearance Staff Branch (MCPPJP), Hq AMC, or to the ARDC center that issued the bailment, whichever is appropriate. The property listed on the Termination Inventory Schedules will be screened and requirements, if any, will be returned for disposition action.

§ 1013.2005 *Bailment by AF bases of aircraft engines or major components to civil aircraft or military contract carriers.* (a) When the commander of an AF base authorizes the bailment of aircraft engine(s) to the owner or operator of a civil aircraft (see § 1013.102-15 of this part), he will insure that the following steps are taken:

(1) The AF bailment agreement, "Bailment Agreement, Aircraft Engine Loan for Use on United States Registered Civil Aircraft Grounded at a U. S. Air Force Base and for the Payment Thereof," is executed and numbered according to ASPR. (See § 1013.2005-1.)

(2) Accountability for the engine(s) so bailed be transferred on AF Form 104B, "USAF Requisition and Shipping Document," or AF Form DD 1149, "Requisition and Invoice/Shipping Document," which will be attached to and made a part of the bailment agreement, to AFH-1802-APO, Commander, AMC, attn: MCPMA.

(3) That all bailment agreements entered into according to these instructions are executed, on behalf of the Government, by a contracting officer duly designated pursuant to § 1001.452 of this chapter.

(b) When the commander of an AF base has authorized the bailment of aircraft engine(s) and/or major components to military contract carrier, he will insure that the actions contained in § 1013.2005 (a) are accomplished except that "Bailment Agreement, Aircraft Engine and/or Components Loan for Use on Civil Air Carriers at a U. S. Air Force Base, and for the Payment Thereof" will be used. (See § 1013.2005-2.) When a major component is bailed, the para-

graphs reading "Engine(s)" will spell out the nomenclature of the component(s) bailed.

§ 1013.2005–1 *Bailment agreement to be used for the bailment of aircraft engine(s) for use on U. S. registered civil aircraft grounded at an AF base, including military charter flights.*

BAILMENT AGREEMENT

AIRCRAFT ENGINE LOAN FOR USE ON UNITED STATES REGISTERED CIVIL AIRCRAFT GROUNDED AT A U. S. AIR FORCE BASE AND FOR THE PAYMENT THEREOF

---------- (Date)

Whereas, ---------- of ---------- hereafter referred to as Bailee, is the ---------- of the ---------- civil aircraft, U. S. Registration No. ------ grounded at ---------- Air Force Base because of ---------- of engine(s), and
(Airline) (Address) (Owner or operator) (Type) (Failure, loss)

Whereas, the Bailee, which has executed AF Form 180, "Hold Harmless Agreement," to land at ---------- Air Force Base, has requested loan of ------ engine(s) from the United States Air Force, hereafter referred to as Bailor, and

Whereas, approval of the Commander ----------, U. S. Air Force, has been obtained for the loan to ----------
(Name of Air Force Base) (Airline)
of the following Air Force engine(s):

Manufacturer	*Type*
----------	----------
----------	----------
----------	----------
----------	----------

Serial No.	*Total engine hours since last overhaul*
----------	----------
----------	----------
----------	----------
----------	----------

and

Whereas, it has been determined that the loan of such engine(s) is necessary, by reason of an emergency, to the continuance of such aircraft on its course to the nearest airport operated by private enterprise, as authorized by act May 20, 1926 (44 Stat. 571; 49 U. S. C. 175);

Now, therefore, in consideration of the promises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. a. Bare engines only will be loaned.

b. No exchange or trade of engines is involved.

c. The Bailor neither accepts responsibility, nor will it be held liable, for operational failure of the loaned engine(s).

d. The Bailor neither accepts responsibility, nor will it be held liable for the loss or damage of the Bailee's engine(s) left at the Bailor's installation.

e. Removal of the Bailee's engine(s) from the Bailor's premises will be accomplished within a reasonable time, not exceeding ------ days from date hereof, at no expense to the Bailor.

2. In consideration of the loan of the above enumerated engine(s), delivery of which is acknowledged upon signature hereto of a duly authorized representative of the Bailee, the Bailee promises and agrees:

a. To pay to the Bailor, for total hours of utilization of the engine(s) at an hourly rate based on the Bailor's average engine hour maintenance cost for the type and model of the loaned engine(s).

b. To pay to the Bailor all hauling, shipping, and handling costs incurred in the transfer of replacement engines(s) to ------ ---- Air Force Base, said engine(s) to be obtained from the nearest Air Force Supply Depot and shipped by the least expensive mode of transportation commensurate with the urgency needs of the ---------- Air Force Base for such replacement.

c. To pay to the Bailor all costs involved when Air Force personnel are required to install the engine(s) loaned to the Bailee.

d. To demount the Bailor's engine(s) from the Bailee's aircraft within ------ (hours, days) from the date of this agreement, prepare said engine(s) for shipment in accordance with United States Air Force procedure, and at the expense of the Bailee ship said engine(s) to such Air Force overhaul depot or other Air Force installation as may be designated by the Commander, Air Materiel Command, and to pay Bailor all expenses incurred in connection with inspection by the Air Force overhauling activity of returned engine(s), including but not limited to block test operations of the engine(s), and repreparation of the engine(s) for storage.

e. To pay to the Bailor all costs arising from the repair of any engine(s) damaged while in the possession of the Bailee or in the return shipment, which, in the judgment of the overhauling depot, can be economically repaired including the cost of all necessary repair parts, labor, and other operating expenses incidental thereto, block test operations of the engine(s), and repreparation of the engine(s) for storage. In the event of an operational failure of a bailed engine of such a nature that it cannot be corrected by emergency assistance under the Air Commerce Act of 1926 (see 49 U. S. C. 175 (d)), the overhaul costs if any, for which the administrative contracting officer has determined the Bailee to be liable, shall be based upon an Air Force report of inspection obtained from the receiving base. The Bailee agrees to pay the Bailor such overhaul costs determined by the administrative contracting officer to be the responsibility of the Bailee as a result of the operational failure, but in no event shall the Bailee's liability for other than emergency assistance be greater than the actual cost of the overhaul of the engine by the Government. In the event of an operational failure of a bailed engine that can be and is corrected by emergency assistance, charges will be determined in accordance with the Air Commerce Act of 1926 (see 49 U. S. C. 175 (d); AFR 87–7, as amended).

f. To pay to the Bailor a sum equal to the total cost of replacement of the type and model of engine(s) on loan under this agreement when such engine(s) has (have) been lost or in the judgment of the overhaul depot has (have) been damaged beyond economical repair while in the possession of the Bailee or in the return shipment of the engine(s) to the designated Air Force installation.

g. The Bailee will ship the Bailor's engine(s) within 24 hours from receipt of notice by the Commander, Air Materiel Command, as to the Air Force installation to which the engine(s) will be returned or with ------ (hours, days) from date hereof when the giving of such notice is concurrent with the loan of the engine(s).

h. To pay to the Bailor an hourly rental of ------ for each hour or fraction thereof delay in return shipment of the engine(s) in accordance with g above.

i. To pay all fees and charges promptly to Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

3. *Officials not to benefit.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

4. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Bailee. Within 30 days from the date of receipt of such copy, the Bailee may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive: *Provided*, That, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Bailee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Bailee shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

5. *Labor provisions.* The following labor provisions shall apply to such portion of this bailment agreement which is performed within the continental limits of the United States.

a. *Eight-Hour Law of 1912.* This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324–326), and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35–45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Bailee or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Bailee or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day; and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of $5 shall be imposed upon the Bailee for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

b. *Nondiscrimination in employment.* In connection with the performance of work under this contract, the Bailee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bailee agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

The Bailee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

c. *Convict labor.* In connection with the performance of work under this contract, the Bailee agrees not to employ any person undergoing sentence of imprisonment at hard labor.

6. *Covenant against contingent fees.* The Bailee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or undertaking for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Bailee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion add to the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

In witness whereof, the parties hereto have executed this contract this ------ day of ----------, 195--.

THE UNITED STATES OF AMERICA,
By ----------
(Contracting Officer)
BAILOR
By ----------
(Official Title)
BAILEE

I, ----------, certify that I am the ---------- of ---------- and that as such I (Bailee)
am authorized to execute the foregoing agreement on behalf of such bailee.

Accountability for the engine(s) loaned to ---------- under this agreement has been (Airline)
transferred to industrial property account APH 1802 by authority contained in Message No. ------, Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio, on AF Form 104B, "USAF Requisition and Shipping Document" or DD Form 1149, "Requisition and Invoice/Shipping Document" attached to and made a part hereof.

§ 1013.2005–2 *Bailment agreement to be utilized for the bailment of aircraft engine(s) and/or components for use of civil air carriers at a U. S. Air Force base, while operating under specific military contract.*

BAILMENT AGREEMENT

AIRCRAFT ENGINE AND/OR COMPONENTS FOR USE OF CIVIL AIR CARRIERS, AT A U. S. AIR FORCE BASE, AND FOR THE PAYMENT THEREOF

---------- (Date)

Whereas, ---------- of ---------- hereafter referred to as Bailee, is the ---------- of the ---------- (Owner or operator) (Type)
civil aircraft, U. S. Registration No. ------ grounded at ---------- Air Force Base because of ---------- of engine(s), and (Failure or loss)

Whereas, the Bailee, operating under Military Contract ------ has landed at ---------- Air Force Base, and has requested loan of ------ engine(s) from the U. S. Air Force, hereafter referred to as the Bailor, and

Whereas, approval for issue of engine(s) under above contract has been obtained from the Commander, ---------- (Name of Air Force Base)
for the loan to ---------- of (Airline)
the following Air Force engine(s):

Manufacturer	*Type*
----------	----------
----------	----------
----------	----------

Serial No.	*Total engine hours since last overhaul*
----------	----------
----------	----------
----------	----------
----------	----------

Whereas, it has been determined that the loan of such engine(s) is necessary, by reason of an emergency, to the continuance of such aircraft on its course to the nearest airport operated by private enterprise, as authorized by Act of May 20, 1926 (44 Stat. 571, 49 U. S. C. 175);

Now, therefore, in consideration of the promises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. a. Bare engines only will be loaned.

b. No exchange or trade of engines is involved.

c. The Bailor neither accepts responsibility, nor will it be held liable, for operational failure of the loaned engine(s).

d. The Bailor neither accepts responsibility, nor will it be held liable, for the loss or damage of the Bailee's engine(s) left at the Bailor's installation.

e. Removal of the Bailee's engine(s) from the Bailor's premises will be accomplished within a reasonable time, not exceeding ------ days from date hereof, at no expense to the Bailor.

2. In consideration of the loan of the above enumerated engine(s), delivery of which is acknowledged upon signature hereto of a duly authorized representative of the Bailee, the Bailee promises and agrees:

a. To pay to the Bailor, for total hours of utilization of the engine(s) at an hourly rate based on the Bailor's average engine hour maintenance cost for the type and model of the loaned engine(s).

b. To pay to the Bailor all costs involved when Air Force personnel are required to install the engine(s) loaned to the Bailee.

c. To demount the Bailor's engine(s), from the Bailee's aircraft within 5 days from receipt of notice from the Contracting Officer, directing its return to the Government. Prepare said engine(s) for shipment in accordance with U. S. Air Force procedure, and at the expense of the Bailee ship said engine(s) to such Air Force overhaul depot or other Air Force installation as may be designated by the Commander, Air Materiel Command.

d. To pay the Bailor all costs arising from repair of any engine(s) damaged while in the possession of the Bailee or in the return shipment, which, in the judgment of the overhauling depot, can be economically repaired, including the cost of all necessary repair parts, labor, and other operating expenses incidental thereto. In the event of an operational failure of a bailed engine of such a nature that it cannot be corrected by emergency assistance under the Air Commerce Act of 1926 (see 49 U. S. C. 175 (d)), the overhaul costs, if any, for which the administrative contracting officer has determined the Bailee to be liable, shall be based upon an Air Force report of inspection obtained from the receiving base. The Bailee agrees to pay the Bailor such overhaul costs determined by the administrative contracting officer to be the responsibility of the Bailee as a result of the operational failure, but in no event shall the Bailee's liability for other than emergency assistance be greater than the actual cost of the overhaul of the engine to the Government. In the event of an operational failure of a bailed engine that can be and is corrected by emergency assistance, charges will be determined in accordance with the Air Commerce Act of 1926 (see 49 U. S. C. 175 (d); AFR 87–7, as amended).

(e) To pay to the Bailor a sum equal to the total cost of replacement of the type and model of engine(s) on loan under this agreement when such engine(s) has (have) been lost or in the judgment of the overhaul depot has (have) been damaged beyond economical repair while in the possession of the Bailee or in the return shipment of the engine(s) to the designated Air Force installation. This paragraph will not be effective in any instance where there is a confliction of contract requirements.

f. The Bailee will ship the Bailor's engine(s) within 5 days of receipt of notice from the Contracting Officer, directing its return to the Government, to the Air Force installation as directed by the Commander, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

g. To pay to the Bailor a daily rental of $15 for each day or fraction thereof delay in return shipment of the engine(s) in accordance with f above.

h. To pay all fees and charges promptly to Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

3. *Officials not to benefit.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

4. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Bailee. Within 30 days from the date of receipt of such copy, the Bailee may appeal by mailing or otherwise furnishing to the Commanding Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive: *Provided*, That, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Bailee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Bailee shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

5. *Labor provisions.* The following labor provisions shall apply to such portion of this bailment agreement which is performed within the continental limits of the United States.

a. *Eight-Hour Law of 1912.* This contract to the extent that it is of a character specified in the Eight-Hour Law of 1912, as amended (40 U. S. Code 324–326), and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35–45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Bailee or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than 8 hours in any 1 calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Bailee or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day;

and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of $5 shall be imposed upon the Bailee, for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

b. Nondiscrimination in Employment. In connection with the performance of work under this contract, the Bailee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provisions 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 Bailee agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

The Bailee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

c. *Convict labor.* In connection with the performance of work under this contract, the Bailee agrees not to employ any person undergoing sentence of imprisonment at hard labor.

6. *Covenant against contingent fees.* The Bailee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Bailee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion add to the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

In witness whereof, the parties hereto have executed this contract this ------ day of ----------, 195--.

THE UNITED STATES OF AMERICA,
By ----------
(Contracting Officer)
BAILOR
By ----------
(Official Title)
BAILEE

I, ----------, certify that I am the ---------- of ---------- and that as such I
(Bailee)
am authorized to execute the foregoing agreement on behalf of such bailee.

Accountability for the engine(s) loaned to ---------- under this agreement has been
(Airline)
transferred to industrial property account AFH 1802 by authority contained in Message No. ------, Headquarters, Air Materiel Command, Wright-Patterson Air Force Base, Ohio, on AE Form 104B "Requisition and Shipping Document" or DD Form 1149, "Requisition and Invoice/Shipping Document" attached to and made a part hereof.

§ 1013.2006 *Interagency transfers of property for bailment.* (a) Government property other than Air Force may be bailed to contractors according to this part for use in performance of AF contracts, including those issued as a result of a DD Form 448, "Military Interdepartmental Purchase Request" (MIPR), provided prior written approval is obtained from the cognizant service. Such property is first transferred to the Air Force on an interagency agreement. AFPI Form 22C will not be initiated prior to accomplishment of the interagency agreement.

(b) AF property may be available to other Government agencies for purpose of bailment. Transfer of such property will be accomplished under the provisions of an interagency agreement.

(c) AF property in a contractor's possession under the provisions of an AF bailment agreement may be made available for use under a contract between another Government agency and the contractor by amending the AF bailment contract with the contractor to so provide. An interagency agreement will not be necessary in these instances.

(d) Provided the conditions in paragraph (c) of this section are not applicable, AF property may be bailed when the contract is initiated by another Government agency as a result of a MIPR.

10. Section 1013.3002 is added as follows:

§ 1013.3002 *Delegation of authority—leases of machine tools and other production equipment.* (a) Secretary of the Air Force Order No. 631.1, July 2, 1957, is quoted below:

1. Authority to enter into and execute leases, in the name of and by the authority of the Secretary of the Air Force, of machine tools and other items of production equipment under the control or custody of the Department of the Air Force, upon the terms and conditions stated below, and in accordance with the lease form specified in paragraph 4, is hereby granted, pursuant to Section 2667 of Title 10, United States Code, to the Chief of Staff, Vice Chief of Staff, and Deputy Chief of Staff, Materiel.

2. The property to be leased under this authorization consists of machine tools and other items of production equipment which are determined not to be necessary for direct use by the Air Force for programmed production, maintenance or repair requirements, operational needs, or for current or reserve inventories, and are otherwise available pursuant to applicable regulations, directives or other instructions. A determination that the property to be leased is available for lease, is not excess property as defined by Section 472 of Title 40, United States Code, and is not for the time being needed for public use will be made by the person exercising this authority.

3. Such machine tools or other items of production equipment may be made available under this authorization to contractors, subcontractors or their vendors in aid of defense production, including development, where it is determined (i) that the furnishing of such property is essential for such purpose, and (ii) that the use of a facilities contract as prescribed by Section XIII of the Armed Services Procurement Regulation and Air Force regulations and directives is impracticable or inappropriate in the particular case.

4. All leases executed pursuant to this authorization shall conform, without deviation, to the lease form approved this day by the Assistant Secretary of the Air Force (Materiel) as such form may be amended from time to time with like approval, and shall be for a term not exceeding five years. Any case involving a deviation from this form will be submitted to the Office of the Assistant Secretary of the Air Force (Materiel) for approval.

5. The rental rates to be charged for the leasing of machine tools or other items of production equipment pursuant to this authorization shall be as follows:

Age of equipment	*Monthly rental rate*
0 to 2 years	1¾% of the installed acquisition cost of the equipment.
Over 2 to 6 years	1½% of the installed acquisition cost of the equipment.
Over 6 to 10 years	1% of the installed acquisition cost of the equipment.
Over 10 years	¾% of the installed acquisition cost of the equipment.

The age of each item of equipment shall be considered to be 0 during the year of its manufacture and shall be increased one year on every January 1 thereafter; rental shall be charged year by year on this basis. The acquisition cost to be used for determining the rent is to be the base price of the equipment with standard accessories and attachments (less special tools and accessories) charged the Government when the equipment was purchased, plus costs of transportation to, and installation in, the place where the equipment will be used under the lease, if such costs are borne by the Government. When special tools and accessories are included with the machine, the acquisition cost shall be increased proportionately. If the purchase price of equipment is not available or cannot be obtained from the manufacturer of the equipment, an estimated purchase price will be requested from the Office of the Assistant Secretary of Defense (Supply and Logistics) through Deputy Chief of Staff, Materiel.

6. It is hereby determined that the leasing of such tools and other production equipment under the terms and conditions herein prescribed will promote the national defense and is advantageous to the Government.

7. The authority conferred on the Chief of Staff, Vice Chief of Staff and the Deputy Chief of Staff, Materiel, in subparagraphs 1 and 2 herein may be redelegated, in writing, with or without power of successive redelegation and under such terms, conditions and limitations as may be deemed appropriate, within the following limitations:

(i) At Headquarters, Air Materiel Command, redelegation will not be made below the level of the Chief or Deputy Chief of a Division, Directorate of Procurement and Production.

(ii) At Air Materiel Areas, redelegation will not be made below the level of the Commander, Deputy Commander or Director of Procurement and Production of the Area.

8. This Order is issued in accordance with Air Force Regulation 11-18, July 16, 1954, Subj: Instruments of Delegation or Assignment of Statutory Authority.

9. Secretary of the Air Force Order No. 631.1, dated April 8, 1955 is hereby superseded.

(b) The authority set forth in paragraph (a) has been delegated by the Deputy Chief of Staff, Materiel, to the Commander, AMC and in turn delegated to the Director of Procurement and Production, Hq AMC.

(c) The authority has been further delegated by the Director of Procurement and Production, Hq AMC, to the following:

(1) Chief, and Deputy Chief, Industrial Resources Division, Hq AMC, without power of redelegation.

(2) The commander and deputy commander of the air materiel areas with

power of redelegation to directors of procurement and production only.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1015—CONTRACT COST PRINCIPLES

1. Section 1015.204 (r) is changed as follows:

(r) Recruiting (including "help wanted" advertising) and training of personnel. Help wanted advertising is allowable to the extent that such costs are reasonable when considered in conjunction with all other recruitment costs.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1016—PROCUREMENT FORMS

1. Section 1016.451–2 is added as follows:

§ 1016.451–2 *Construction contract progress schedule (AFPI Form 78).*—(a) *Purpose.* As an aid to contract administration, Special Provision 1–607, "Progress Charts, Sundays, Holidays, and Nights," requires construction contractors to prepare and submit to the contracting officer for approval a practicable and feasible progress schedule showing the order in which the contractor proposes to carry out work required by the contract. The schedule is required to be submitted to the contracting officer within 5 days after commencement of work or within such time as established by the contracting officer. Bureau of Budget Approval No. 21–R129 for AFPI Form 78 expires December 31, 1960.

(b) *Use of form.* Use of APPI Form 78 is mandatory for all construction contracts exceeding $2,000.

(c) *Preparation and approval of form.* Instructions to the contractor for preparation of AFPI Form 78 are contained on the reverse side thereof. The submission of the brief written report referred to in paragraph 11 of the instructions may satisfy the requirements for weekly submission of progress information required by SP 1–07. After receipt of AFPI Form 78 showing a proposed plan of progress from the contractor the contracting officer will:

(1) In coordination with the installations engineer, review the proposed plan of progress for accomplishing the work for compliance with the contract; and where applicable, assure that the planned progress is compatible with work being accomplished by other contractors or by the Government.

(2) If the proposed progress schedule submitted by the contractor is approved by the contracting officer, as recommended by the installations engineer, signature of the installations engineer or his designated representative will be obtained in block (10). The contracting officer will manually approve three copies of the schedule in block 11.

2. Subpart E is added as follows:

SUBPART E—SPECIAL CONTRACT AND ORDER FORMS

§ 1016.505 *Novation agreements.*

§ 1016.505–2 *Agreements to recognize a successor in interest.* The decision as to whether the Government should recognize a third party as the successor in interest to a Government contract should depend on whether such succession is in the best interest of the Government. In determining whether such transfers are in the best interest of the Government, the contracting officer will be guided by the extent to which the change deprives the Government of the particular management and financial responsibility which rendered the transferor a responsible contractor. Prohibited assignments are only voidable; the Government may consent thereto, or at its option may annul the assigned contract. The Government will not, in advance of a voluntary assignment of a Government contract(s), promise to consent to any succession in interest in such contract.

(a) If recognition of the voluntary assignment of a contract is determined to be consistent with the best interest of the Government, the agreement of the Government with the transferor and transferee, as prescribed in § 16.505–2 (b) of this title, will include an Approval clause as described in § 7.105–2 of this title. Such agreement will then be submitted through contract reviewing channels for review by the Office of the Procurement Committee (MCPC), Hq AMC, and approval by the Deputy Director/Procurement, Hq AMC.

(b) Neither the Approval clause nor review by MCPC is required if the succession in interest: (1) is not a voluntary assignment but is a valid transfer by operation of law, for example, transfer of assets pursuant to proceedings under the Bankruptcy Act or through receivership proceedings, and (2) is determined by the contracting officer to be in the best interest of the Government.

(c) If it is determined by the contracting officer that the completion of the performance of the assigned contract by the transferee would not be in the best interest of the Government, and for that reason the execution of the agreement prescribed by § 16.505–2 (b) of this title, should not be entered into by the Government, the matter will be submitted, together with a complete statement of facts, to the Commander, AMC, attn: MCPP–3.

(d) All agreements prepared according to the form prescribed in § 16.505–2 (b) of this title will include above the certificate a note to read as follows:

NOTE: Transferor/Transferee should cause the following certificate to be executed under its corporate seal, provided that the same officer will not execute both the supplemental agreement and the certificate.

§ 1016.505–51 *Procedure.* (a) To avoid duplicating of effort on the part of procuring activities in preparing and executing agreements to cover change of name, transfer of business, and corporate mergers, only one supplemental agreement will be prepared to effect necessary changes for all contracts between the applicable AF activities and the contractor involved. Where necessary, an exhibit will be attached to the contract, listing the numbers of the affected contracts and the names and addresses of the AF offices responsible for the affected contracts.

(b) After the execution (and approval, if required by § 1016.505–2) of the supplemental agreement, the office assigned the responsibility of executing the supplemental agreement will prepare a letter to each of the other affected AF procuring activities. The letter will advise the activities of the consummation of the supplemental agreement and request that a change order as prescribed by § 1016.505–53 be issued for each affected contract by the responsible contracting officer. Each such supplemental agreement will contain the following information for distribution purposes:

(1) List of the contracts affected.

(2) Names and address of the AF procuring activities having contracts subject to the supplemental agreement.

(c) For each such affected contract, the responsible procuring contracting officer will prepare a change order acknowledging the change in name, merger, etc. The change order will indicate the nature of the transaction, the result attained, and will cite the number of the contract file in which the original relevant documents and supplemental agreement are filed.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1030—APPENDICES TO AIR FORCE PROCUREMENT INSTRUCTION

1. Under § 1030.2, B–302 is amended to read as follows:

B–302 *Pricing.* It is recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary cost records to ascertain unit prices. Under such circumstances, the property administrator may rely upon the supplementary records which contain such information. The requirement that unit prices be contained in the official property records will not apply to those separate property accounts located at subcontractor's plants or contractor's secondary sites of operations, provided: (a) records maintained by the prime contractor, at his primary site, are in full compliance in this respect and (b) the prime contractor agrees to furnish either actual or reasonable estimated unit prices to the subcontractor, or secondary site, as the need arises.

(1) Generally, it is desired that separate unit prices be applied to items of special tooling fabricated or acquired by the contractor. However, if, under a contractor's approved and established accounting system, it has been determined that the expense of maintaining detailed cost records is excessive and otherwise impracticable in consideration of all circumstances, group pricing may be used for special tooling. Group pricing may be used for work-in-process. Processed materials, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered work-in-process with respect to this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for special tooling and work-in-process necessary for the proper protection of the interests of the Government.

(2) Normally, the unit price of Government-furnished property will be provided on the shipping document prepared by the AF activity accomplishing the shipment to the

contractor's facility. Such unit prices will be recorded according to the contractor's approved property control system. The property administrator will assure that the unit price is properly recorded on the appropriate records.

2. In § 1030.2, B-401.1 is amended to read as follows:

B-401.1 *Identification.* (a) Plant equipment, other than that included within the Departmental industrial equipment reserve program, will be assigned an identification number and marked according to a system of identification and marking as agreed to by the contractor and administrative contracting officer, provided the system conforms to the requirements of the Manual. Numbers and tags will be permanent and will not be changed as long as the equipment remains under the control of the Air Force, however, such markings will be removed prior to sale, scrapping, or transfer of funding and control responsibilities to other military departments.

3. In § 1030.2, B-2002 (c) is deleted and the following substituted therefor:

(c) A deficiency incident to shipment of Government-furnished property not exceeding $10 in value, or a damage which does not impair the usefulness of the property or render it unsuitable for use and therefore no repairs are effected, may be determined to be inconsequential by the property administrator and need not be reported under the procedures of this general paragraph.

4. In § 1030.3, Appendix C-2002 (c) is deleted and the following substituted therefor:

(c) A deficiency incident to shipment of Government-furnished property, not exceeding $10 in value, or a damage which does not impair the usefulness of the property or render it unsuitable for use and therefore no repairs are effected, may be determined to be inconsequential by the property administrator and need not be reported under the procedures of this general paragraph.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

PART 1052—FACILITY CAPABILITY REPORTS

1. Section 1052.103 is deleted and the following is substituted therefor:

§ 1052.103 *General requirements for obtaining an FCR.* (a) An FCR will be requested only when an award is contemplated to a firm from which a bid or proposal has been received. Concurrent requests will not be made for FCR's on the same procurement. An FCR will first be requested on the lowest responsive bidder. Successive requests will be made only after a negative reply to the last request is received. In the case of a negative FCR on a small business firm, the FCR on the next low responsive bidder will not be requested until it is known that a certificate of competency will not be issued by the Small Business Administration.

(b) An FCR will be requested:

(1) When award of a new contract or supplement to an existing contract for an initial or additional quantity of supplies or services will exceed $10,000.

(2) Regardless of dollar amount, if: (i) the contractor's name appears on the AMC Experience List (§ 1001.651-2 of this chapter), (ii) the contractor has requested progress or advance payments, or (iii) there is any doubt as to the contractor's ability to perform.

(c) An FCR will be requested for procurements exempted in § 1052.105, if: (1) the contractor's name appears on the AMC Experience List, (2) progress or advance payments are requested, or (3) there is any doubt as to the contractor's ability to perform. In such instances, the request for FCR will include the reason.

(d) Before awarding a contract on the basis of an FCR that is more than 60 days old, buyers will obtain confirmation as to its current validity from the office which prepared the FCR.

(e) An FCR is not required for:

(1) Definitive contracts which supersede letter contracts or notices of award previously covered by an FCR or covered by waiver or exemption.

(2) Change orders or supplemental agreements for modification, repair, spare parts, kits, special tools, ground-handling equipment, and support items incidental to items already on contract. However, if such supplemental agreements provide for an initial or additional quantity of supplies or services and are to be covered by progress payments, whether progress payments are provided for in the basic contract or not, the procedures set forth in Subpart C, Part 1058 of this chapter will apply.

2. Subpart C is added as follows:

SUBPART C—REQUIREMENTS AND PROCEDURES FOR SPECIAL SOURCE SURVEYS

§ 1052.300 *Scope of subpart.* This subpart sets forth permissive use of, and establishes requirements and procedures for, conducting Special Source Surveys as part of the contractor selection procedure prior to contract award.

§ 1052.302 *General requirements for requesting a special source survey.* (a) A survey may be requested in negotiated procurements when information is deemed desirable prior to issuance of RFP or under one or more of the following conditions:

(1) Magnitude of proposed procurement is substantially in excess of current or past level of production in potential source or sources and large build-up in contractor organization may be required.

(2) Complexity of materiel in proposed procurement indicates need for detailed survey, i. e., subcontracting, required skills, production capability, quality, manufacturing methods.

(3) Past record of company in production, cost, finances, or management, indicates need for examination by specialists.

(4) Buyer will be substantially assisted in arriving at decision in negotiated procurements by appraisal of proposals and/or plant visits by specialists when abnormal circumstances prevail.

(5) To verify and determine the adequacy of a proposal.

(6) To determine the comparative production capability of two or more facilities or the capacity and capability of an industry to meet an anticipated program.

(7) The potential source, if selected, will be producing items which are substantially different from items it has produced in the past.

(8) The existence of information that would indicate the need for a survey.

§ 1052.307 *Relationship to FCR.* The FCR System (Subpart A of this part) will be the controlling device. A Special Source Survey should be considered as supplementary data in evaluating a source or sources.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

PART 1053—CONTRACTS; GENERAL

1. Section 1053.102-3 (b) is deleted and the following substituted therefor:

(b) "Required" delivery schedule will be specified when time is a material factor in making the award; e. g., when delay in delivery will cause inconvenience to the Government, impede progress on other contracts, or when necessary to receive delivery within a short period of time makes delivery a significant consideration in the award of the contract.

2. Section 1053.102-4 is added as follows:

§ 1053.102-4 *Maximum delivery schedules.* Appropriations carrying a fiscal-year designation as the final year of availability are available for obligation up to and including June 30 of that fiscal year and are available for expenditure for 2 additional years unless otherwise advised. For example, 1957 annual appropriations are available for obligation through June 30, 1957, and for expenditure through June 30, 1959. Accordingly, maximum delivery schedules will be controlled by the foregoing legal requirement for expenditure of appropriated funds. Contracting officers will assure that delivery requirements are in strict accordance with the foregoing and all contract reviewing authorities will assure that strict conformance with the requirements of this section have been met.

3. Section 1053.102-6 is deleted and the following substituted therefor:

§ 1053.102-6 *Amendment of delivery schedules in supply or research and development contracts.* (Not applicable to local purchase contracts.)

(a) Contracts having unrealistic delivery schedules may be changed if the best interests of the Government will be furthered by such action, and contracts having delinquent delivery schedules may be amended if the best interests of the Government will not be jeopardized by such action. Delinquent delivery schedules will be held to a minimum at all times consistent with the preceding sentence. If the facts surrounding an individual contract warrant such action, the administrative contracting officer or the procuring contracting officer, if the contract is administered by the procuring activity, will, immediately upon determination or notification that a contractor will not be able to complete deliveries on schedule, take affirmative steps to initiate an amendment of the

delivery schedule according to instructions set forth below. If the contractor is delinquent, the administrative contracting officer or the procuring contracting officer, if the contract is being administered by the procuring activity, may initiate an amendment of the delivery schedule according to instructions set forth below, or the administrative contracting officer or procuring contracting officer may recommend termination of the contract according to Part 1008 of this chapter. Extensions of delivery schedules may be effected without approval from higher Headquarters in the following instances: (for the division of responsibilities between the administrative contracting officer and the procuring contracting office, see paragraphs (c) and (d)).

(1) When the amendment is supported by legal consideration. This occurs when the contractor offers a price reduction or other benefits in consideration for an extension of delivery schedule and the Air Force's or other Armed Services interest will not be prejudiced by such extension.

(2) Pursuant to changed Government requirements. Such a case would be where extension of the delivery schedule is dictated by an authenticated revised delivery requirement of the Air Force (see paragraph 12c, chapter 2, part two, AMCM 170–1) or the other Armed Services. Every effort will be made to obtain from the contractor an agreement whereby the Government will obtain the benefits of any savings to the contractor on account of the revised delivery schedule.

(3) Pursuant to specific, standard ASPR or AFPI contractual clauses. Such clauses include the Changes Clause, the Default Clause, particularly the excusable delay portion, the Government-Furnished Property Clause, the Government Property Clause, and the Excusable Delays Clause.

(4) Pursuant to special contract provisions. These are provisions, other than standard ASPR or AFPI clauses, made a part of a contract and agreed to by the parties thereto.

(b) Prior to issuing a contractual modification, the administrative contracting officer or procuring contracting officer, whoever is to sign the contractual modification amending the delivery schedule, will effect coordination with his staff judge advocate as to legality. In all cases the staff judge advocate will determine whether or not legal consideration exists. The staff judge advocate's determination will be final concerning the existence of legal consideration. The adequacy or amount of consideration will be the responsibility for determination by the administrative contracting officer and procuring contracting officer together or by either the administrative contracting officer or procuring contracting officer alone.

(c) Responsibilities of the administrative contracting officer.

(1) The administrative contracting officer, according to the conditions contained herein but without coordination with the procuring contracting officer or buyer, will accomplish and issue contractual modifications to amend only delivery schedules that pertain to:

(i) Approved price spare parts change requests (SPCR's) and approved priced exhibits (§ 1007.2606–3 of this chapter) to open contracts covered by Subpart Z, Part 1007 of this chapter.

(ii) Spare parts exhibits (MCP 71–649, MCP 71–666, MCP 71–666A, MCP 71–669, and MCP 71–670), special support equipment exhibits (MCP 71–671), training parts exhibits (MCP 71–610), and ground support equipment exhibits (MCP 71–650) whenever the exhibits are made a part of a contract by means of a supplemental agreement signed by the administrative contracting officer. See Subparts C and D, Part 1055 of this chapter.

(2) When a contractor alleges delinquent performance due to causes beyond his control and without his fault or negligence, the administrative contracting officer, if he is administering the contract, will investigate the allegations and make a finding of fact as to the conditions found to exist.

(3) Upon determination or notification that a contract under his administration is delinquent or almost delinquent and if he believes that a revision to the delivery schedule is warranted, the administrative contracting officer will:

(i) When he is authorized to amend the delivery schedule, forward his findings, recommendations, and other information deemed pertinent to his AMA staff judge advocate for a determination of the legality of the proposed revision. Furnish the staff judge advocate with the address, including code, of the production activity at the APD or AFPRO concerned with the contract. The original copy of the staff judge advocate's opinion, either affirmative or negative, will be returned directly to the administrative contracting officer with a copy to the aforementioned production activity.

(ii) In all other instances, forward his findings, recommendations, and other information deemed pertinent to the procuring contracting officer. If he is recommending a new, revised delivery schedule, furnish the procuring contracting officer with the address, including code, of the production activity at the APD or AFPRO concerned with the contract.

(iii) Regardless of whether the preceding subparagraph (i) or (ii) is involved, furnish the appropriate production activity with a copy of the foregoing findings, recommendations, and other pertinent information.

(4) The action called for in subparagraph (3) above may be taken by administrative contracting officer at any time prior to a 90-calendar day delinquency status of a contract. However, when contracts being administered by an administrative contracting officer reach a 90-calendar day delinquency status, within 10 workdays after receipt of a documented case history from the production activity (see paragraph (h) below), the administrative contracting officer will determine whether delivery schedule revision is warranted, and, if it is determined warranted, take the action outlined in subparagraph (3) above. Where the contract prescribes liquidated damages a determination whether delivery schedule revision is warranted will be made and, if it is determined warranted, the action called for in subparagraph (3) above will be taken as soon as possible after the initial day of delinquency. Whenever the administrative contracting officer has reason to believe that a contract containing liquidated damages provisions will become delinquent as to delivery, he will promptly notify the procuring contracting officer. (See § 1007.105–5 (a) (5) of this chapter.)

(5) After complying with the requirements specified in this section, the administrative contracting officer, when authorized, will accomplish and issue, within 30 workdays after receiving supply (prime AMA or depot) and/or Support Division, Hq AMC (in the case of GFAE) coordination, a contractual modification revising the delivery schedule.

(d) Responsibilities of the procuring contracting officer.

(1) Upon determination or notification that a contract under the administration of the procuring contracting officer is delinquent or almost delinquent and if the procuring contracting officer believes that a revision to the delivery schedule is warranted, the procuring contracting officer will try to amend the delivery schedule by obtaining the necessary staff judge advocate and supply (prime AMA or depot) and/or Support Division, Hq AMC (in the case of GFAE) coordination.

(2) Within 10 workdays after receiving a recommendation to revise a delivery schedule from the administrative contracting officer, the procuring contracting officer will forward the administrative contracting officer's findings, recommendations, etc., to his staff judge advocate for a determination as to the legality of the proposed amendment mentioned in the administrative contracting officer's correspondence.

(3) After complying with the requirements specified in this section, the procuring contracting officer will accomplish and issue, within 30 workdays after receiving prime depot and/or Support Division coordination, a contractual modification revising the delivery schedule.

(e) In all other cases, neither the procuring contracting officer nor the administrative contracting officer is authorized to amend the delivery schedule without approval from higher headquarters. If the contractor elects, he may file a claim under Public Law 921, as implemented by Executive Order No. 10210. The contractor's claim will be processed according to Part 1056 of this chapter.

(f) Any amendment of contract delivery schedules will be in strict conformance with the requirements of § 1053.–102–4.

(g) When changes in the contract delivery schedule result from diversions of contract items to non-U. S. Government customers of the contractor, see Subpart U of this part.

(h) *Responsibility of production follow-up activities.* If a contract has

reached a 90-calendar day delinquent age it has been determined that no action has been accomplished by the administrative contracting officer during the 90-calendar day delinquent period, the office having primary production responsibility will prepare and document a case history of the delinquent contract and deliver it to the administrative contracting officer within a period not exceeding 4 workdays following the 90th calendar day of delinquency. The production analysis data will be prepared to support a recommendation to the administrative contracting officer that the contract delivery schedule be amended to meet the realistic capabilities of the contractor.

4. Sections 1053.405, 1053.405–1, and 1053.405–2, are deleted and the following substituted therefor:

§ 1053.405 *Certification of invoices by vendors.*

§ 1053.405–1 *General.* The Comptroller General, by General Regulations No. 134, March 11, 1957, has discontinued, with the exceptions set forth in § 1053.405–2, the requirement that invoices or bills submitted by all vendors conducting business with Government agencies contain the following certification:

I certify that the above bill is correct and just and that payment has not been received.

This action was taken to make possible simplification of billing procedures of all vendors, to eliminate administrative cost in connection therewith for both the Government and the vendor, and to facilitate the payment of bills and invoices.

§ 1053.405–2 *Exceptions.* (a) All bills and invoices of persons, corporations, or agencies furnishing the Government with transportation and accessorial services are excluded from the revised procedures. Such bills and invoices will continue to be certified.

(b) Statements of cost required by the allowable cost, fixed fee and payment clause set forth in § 7.203–4 (b) of this title must continue to be certified by an officer or other responsible official of the contractor authorized by it to certify such statements.

5. Section 1053.405–3 is added as follows:

§ 1053.405–3 *Responsibility of vendors.* (a) the elimination of the requirement for certification does not dispense with the requirement for specific certification of facts required by certain contracts.

(b) The omission of the certification from bills or invoices submitted for payment to Government agencies does not in any manner lessen the responsibility of vendors in complying with all statutory requirements applicable to transactions with the Government, nor will it be construed as mitigating their liability for asserting false, fictitious, or fraudulent claims against the United States, penalties for which are set forth in 18 U. S. C. 287.

6. Section 1053.406–6 (a) is deleted and the following substituted therefor:

§ 1053.406–6 *Processing variations not permitted by the Contract*—(a) *Overruns.* If the contractor produces an overrun under a contract which does not provide for any variation in quantity, or if the overrun exceeds the percentage permitted by the contract, the Government is under no obligation to accept the unanticipated excess. Ordinarily, the contractor will be notified by the administrative contracting officer that the Government does not consider itself obligated to, and does not desire to accept the extra quantity. The unanticipated excess will then be returned or tendered to the contractor for disposition by the contractor at his expense, including all transportation and handling charges. When the unanticipated overrun for an individual shipment is: (1) less than $10 it will be considered inconsequential and be ignored, (2) $10 or more, the administrative contracting officer will promptly make an investigation upon receipt of an AF Form 672, "Report of Discrepancy," from the receiving activity and within 30 days send written instructions to the receiving activity as to the proper disposition to be made of the overrun.

7. Section 1053.1602 (c) is added as follows:

(c) In certain instances contracts between the Government and its employees may be subject to the limitations of the dual compensation statutes. Questions with regard to these laws, in particular cases, should be referred to the local staff judge advocate.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1054—CONTRACT ADMINISTRATION

1. Section 1054.104 (bb) is added as follows:

(bb) When decision to terminate or reduce is pending on aircraft or missile propulsion system production contracts, obtain cost data and complete engine and spares data for the procuring contracting officer.

2. Section 1054.113 is added as follows:

§ 1054.113 *Contractor radio frequency and call sign authorization.* Applications by contractors for radio frequency and call sign authorization will be processed by the administrative contracting officer.

3. Section 1054.305 (b) is deleted and the following substituted therefor:

(b) Subject to the limitations of (a) and (c) of this section, a CCN may be issued to change the specifications if the change is for the purpose of: (1) correcting deficiencies arising out of the specifications and not due to contractor's noncompliance with contract terms, or (2) improving reliability of the items, or (3) improving performance of the items within the scope of the original objectives and general configuration, or (4) any combination of the foregoing. If the purpose of a change is one of the foregoing, the order directing the change may be limited to only a portion of the work involved, such as study, prototyping, or testing, and may be limited to fewer than all the end-items on contract. A CCN also may include authorization to accomplish work incidental to the objective of the change, such as modification of bailed equipment needed for testing. However, study or development of projects for general application will not be ordered by CCN. Where only a portion of the work involved is being ordered, the file, CCN, and definitizing document should so indicate, in order that changes of this type may be identified and distinguished from projects which are outside the scope of the Changes clause.

(c) In no event will CCN's be issued to effect changes in the following instances:

(1) Where the contract does not contain a Changes clause or other contractual provision authorizing the use of the CCN.

(2) To effect any partial or total termination.

(3) To add or delete items from spare parts lists.

(4) To effect special price increases or reductions, either voluntary or resulting from a price redetermination provision of the contract.

(5) To add or delete contract clauses.

4. Section 1054.311 (b) is deleted and the following substituted therefor:

(b) Within 15 calendar days after receiving a satisfactory cost quotation or notification that no costs are involved, the buyer will initiate action to definitize all CCN's covered by the quotation in a contractual document. This does not permit the buyer to hold a cost quotation for 15 calendar days when the CCN involved will become delinquent before completion of definitizing action under the six months' limitation for computing and reporting delinquent CCN's. However, in cases of cost quotations received for CCN's issued under contracts containing FPR C or D clauses prior to price redetermination or under incentive type contracts prior to establishment of a firm target price, the buyer may withhold these cost quotations but must definitize them at the time of price redetermination or when a firm target price is established. Notwithstanding the foregoing, quotations should not be withheld if it is apparent that the price of the end item will be increased or decreased substantially. When CCN's have been issued under a letter contract, the buyer, whenever possible, will formalize such CCN's at the time the letter contract is definitized.

5. Sections 1054.402 and 1054.403 are deleted and the following substituted therefor:

§ 1054.402 *General.* (a) The contractor will not be reimbursed under a cost-reimbursement type contract for expenditures incurred in excess of the estimated costs of the work set forth in the contract, until funds sufficient to cover such additional expenditures are allotted to the contract.

(b) When the administrative contracting officer is notified or ascertains independently from contractor that the actual cost may exceed the estimated costs of performing the contract, he will inform the contractor, in writing, of the necessity for requesting an additional allotment of funds for the performance of the contract.

§ 1054.403 *Action by the administrative contracting officer on contractor's request.* The contractor's request for an additional allotment will be made to the administrative contracting officer. The contractor's request will:

(a) If the contract includes more than one contract item number, cite the item number(s) creating the overrun and estimate the amounts to be charged to each, to permit the procuring contracting officer to determine what additional funds are required.

(b) State what elements of costs, i. e., labor, material overhead, etc., have increased over the original estimate of performing the contract.

(c) Identify the factors contributing to the increase in costs, such as error in original estimate, changed conditions, defective work, etc. The administrative contracting officer will consult the cognizant Government auditor and other appropriate technical personnel and make such other checks as are necessary to ascertain whether the contractor is in need of the additional funds requested and whether the contractor's estimate of the additional funds is reasonable. The administrative contracting officer, after examination of the contractor's request, will forward it, together with his recommendations, to the procuring contracting officer.

6. Section 1054.606 is deleted and the following substituted therefor:

§ 1054.606 *Contract provisions for progress payments.* (a) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 70 percent of the cost of the property (except that progress payments at 75 percent to small business concerns who are prime contractors may be approved by the contracting officer when such progress payments meet the standards for customary progress payments to small business concerns as outlined in AFR 173-133) may include the following clause:

PROGRESS PAYMENTS

(a) Progress payments, which are hereby defined as payments prior to acceptance, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(b) The Contracting Officer may, from time to time, authorize progress payments to the Contractor upon property acquired or produced and service performed by it for the performance of this contract: *Provided*, That such progress payments shall not exceed 70 percent of the cost to the Contractor of the property and services upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer as being representative of the value of the work already performed: *Provided further*, That in no event shall the total of unliquidated progress payments (see (e) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the total contract price of supplies or services still to be delivered.

(c) Upon the making of any progress payments under this contract, title to all parts, materials, inventories, work in process, and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, That nothing herein shall deprive the Contractor of any further progress or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(d) The Contractor represents and warrants that the property, upon which any progress payment is made hereunder, shall be cleared of all liens and encumbrances of any kind whatsoever upon receipt of any progress payment.

(e) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the progress payments theretofore made to the Contractor, under the authority herein contained.

(f) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of Notice of Termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer: *Provided*, That after receipt of Notice of Termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of progress payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph: *Provided*, That any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all progress payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor.

(g) The provisions of this contract referring to "Liability for Government-Furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this clause. The provisions of this clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

(h) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for advance payments, and in addition if at the time any progress payment is to be made to the Contractor under the provisions of this progress payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such progress payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments clause, and shall thereafter be withdrawn only pursuant to such provisions.

(b) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 85 percent of direct labor and material costs to the Contractor of the property, may include the clause set forth in § 1054.606 (a), except that in paragraph (b) the words "70 percent of the cost" will be replaced by the words "85 percent of the direct labor and direct material costs." Progress payments at 90 percent to small business concerns may be approved by the contracting officer under the same conditions as outlined in paragraph (a) above.

7. Section 1054.2603 (c) is deleted and the following substituted therefor:

(c) All incentive type and price redetermination type contracts will be systematically reviewed at least every 3 months to obtain voluntary downward interim billing price adjustments and prompt refunds, as appropriate. The making of voluntary refunds in anticipation of retroactive price reductions will be encouraged. Contractors' proposals for any voluntary refund in connection with final pricing will be accepted without prejudice to final pricing. In connection with voluntary refunds, minimum refunds proposed by contractors in connection with final pricing proposals, and refunds incident to quarterly statements furnished under contractual requirements, contractors will not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. Such adjustments as may be essential in connection with refunds will be accomplished by appropriate Government personnel, with such information as may be essential obtained from contractors after refunds are made. The making, acceptance, and deposit of refunds will not be delayed pending the making of any necessary accounting adjustments. When reduction in billing prices are proposed by contractors, they will be made effective immediately without prejudice to further adjustment. Billings voluntarily reduced by contractors will, if otherwise proper, be paid at the reduced amounts without awaiting

contract amendments. Notwithstanding the above, it will be necessary for the administrative contracting officer to promptly comply with the provisions of § 1054.2602 (c) so that the credit may be shown by item breakdown rather than as a lump sum credit, as finance office records must identify the credits to the applicable appropriations cited on the contract. The reduced price invoice or the credit memorandum should bear the following wording:

This interim price reduction is tendered by the contractor and accepted by the Government without prejudice to the rights of any of the parties in negotiation of final price of subject contract.

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 1057—REPORTS

1. Section 1057.101 is added as follows:

§ 1057.101 *Applicability of subpart.* This subpart applies to all AF procurement activities.

2. Sections 1057.102 and 1057.103 are deleted and the following substituted therefor:

§ 1057.102 *Definitions.* (a) "Procurement Action" is the term used in this report to refer to any net contractual action to obtain supplies, services, or construction, which obligates or deobligates funds.

(1) The term includes: preliminary contractual instruments such as letter contracts; definitive contracts, both new and superseding; purchase orders; job orders; task orders; delivery orders; provisioning order obligating documents (POOD's); contingency orders; and any other orders against existing contracts, including debit and credit actions that modify a contract, such as amendments, change orders, supplemental agreements, cancellations, and terminations.

(2) The term excludes: requisitions and other means of transferring supplies or services within, or between, the military departments or the procurement agencies of the Department of Defense; orders against MPSA contracts; and contracts which do not obligate a firm total dollar amount or do not name a fixed quantity, such as indefinite delivery type contracts (orders placed against contracts of the latter type are to be reported as procurement actions).

(b) "Qualified Product" is an item on a Qualified Products List or tested and approved for inclusion in a Qualified Products List, for which one or more sources of procurement have been approved as authorized by Subpart E, Part 2 of this title.

(c) "Intra-Governmental Procurement Actions" include interdepartmental actions and interservice actions, as defined below:

(1) "Interservice Actions" include purchase orders or other procurement instruments placed by one Department of Defense activity against indefinite delivery type contracts or agreements executed by another Department of Defense activity. Examples are: (i) orders placed by one military department against contracts entered into by another military department, (ii) orders placed by activities of one military department against contracts entered into by other activities of the same military department, and (iii) orders placed by a military department or activity against contracts entered into by single manager agencies.

NOTE: Orders placed by an activity against its own indefinite delivery type contract will not be reported as interservice actions, but will be reported as advertised or negotiated, as appropriate. (See §§ 1057.102 (d) and 1057.102 (e).)

(2) "Interdepartmental Actions" include procurement from or through departments, agencies, institutions, or corporations of the Federal, State, or local governments, other than the Department of Defense. Examples are: (i) orders placed by a military department or activity against contracts entered into by any Federal department, agency, institution, or corporation outside the Department of Defense, (ii) contracts placed by a military department or activity with any U. S. Government agency, institution, or corporation outside the Department of Defense.

EXCEPTIONS: State-controlled educational institutions will not be reported as interdepartmental, but will be reported as large nonprofit institutions.

(d) "Advertised Procurement Actions" are new or modifying actions relating to procurement resulting from acceptance of a bid made by a supplier in response to formal advertising for bids (Part 2 of this title). Also, to be included as "Advertised Procurement Actions" for purposes of this report are orders against a reporting activity's own indefinite delivery type contract originally placed through formal advertising.

(e) "Negotiated Procurement Actions" are new or modifying actions relating to procurement resulting from negotiation procedures (Part 3 of this title). Also included are orders against an activity's own indefinite delivery type contract originally placed through negotiation procedures.

(f) "Small Business Restricted Advertising" is a form of negotiated procurement conducted in the same way as prescribed for formal advertising under Part 2 of this title, except that bids and awards will be restricted to small business concerns.

(g) "Actions Negotiated Under PL 413 Exception" are those now authorized under Title 10, U. S. Code, and explained in detail in Subpart B, Part 3 of this title. The numbered exceptions under Title 10, U. S. Code 2304 (a), correspond to the 17 numbered exceptions listed under Public Law 413.

(h) "Labor Surplus Areas" are so classified by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its publication, "Bi-Monthly Summary of Labor Market Developments in Major Areas," and areas which are not so classified by the Department of Labor but which are individually certified as areas of substantial labor surplus by a local State employment service office at the request of any firm located in these areas which is bidding for a procurement involving set-asides. (§ 1.302–4 (a) (i) of this title.) "Labor Surplus Industries" are industries which have been certified for preferential treatment by the Office of Defense Mobilization according to Defense Manpower Policy No. 4.

(i) "Major Disaster Area" is an area so designated by the President or Federal Civil Defense Administrator under Public Law 875 (81st Congress), as amended.

(j) "Labor Surplus Set-Aside" designates a method of procurement whereby a portion of the requirement is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with firms situated in labor surplus areas, and is to be performed substantially within such labor surplus areas (§ 1.302–4 (a) (2) of this title).

(k) "Small Business Concern" is a concern which is not dominant in its field of operation and which, with its affiliates, has fewer than 500 employees, or is certified as a small business concern by the Small Business Administration.

(l) "Nonprofit Institution" means any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature.

(m) "Small Business Set-Aside" designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for small business firms. These procurements are considered "negotiated" regardless of whether the contract is awarded by negotiation or by formal advertising procedures. The set-aside may be agreed to jointly by the Small Business Administration representative and the Department of Defense procuring officer, or may be determined unilaterally by the Department of Defense representative (DOD Instruction 4100.9 and §§ 1051.105–1 (d) and (e) of this chapter).

(n) "Type of Contract" is defined and explained in detail in Subpart D, Part 3 of this title.

(o) "Modifications Authorized by Existing Contract" are modifications made pursuant to terms of the existing contract. For purpose of this Instruction, such modifications include but are not limited to:

(1) Conversion of letter contracts to definitive contracts.

(2) Increase or decrease of funds obligated on letter contracts and cost-reimbursement type contracts, provided that such increase or decrease is not the result of a change in the scope of the work or quantities to be delivered.

(3) Change orders, supplemental agreements, or contract amendments issued pursuant to the contractual provisions covering changes, changed conditions, price escalation, price redetermination, incentive, termination for convenience, default, taxes, and variations in quantity caused by conditions of load-

ing, shipping, or packing, allowances in manufacturing processes.

(4) Increase or decrease of funds obligated on contracts through supplemental agreements or contract amendments issued pursuant to provisioning procedures incorporated in the contracts for concurrent spare parts or other accessory equipment specified to be delivered under the contracts.

The phrase "modification authorized by existing contract," for the purpose of this Subchapter, does not include:

(1) Supplemental agreements or contract amendments issued pursuant to contractual provisions governing increase/decrease quantity options or extras (these should be reported as new procurement).

(2) Supplemental agreements or contract amendments for concurrent spares or other accessory equipment not originally provided for in the contract (these should be reported as new procurement).

(3) Orders (which obligate funds) against contracts or agreements upon which funds were not obligated. If these orders are placed against an activity's own contract, such actions will be reported in item 15 DD, Form 350, as (3) advertised or (5) negotiated, dependent upon the method of purchase employed in placement of the basic contract. Orders against other than an activity's own contract will be reported in item 15 as (i) Interservice or (ii) Interdepartmental, as appropriate (see §§ 1057.102 (c) (1) and (2)).

(p) "Planned Item" is an item meeting the criteria of DOD Directive 4005.6, January 26, 1954, as amended December 16, 1954, and listed in the current issue of the Department of Defense Consolidated List of Principal Military Items published by the Office of the Secretary of Defense (Supply and Logistics).

(q) "United States, Territories, Possessions and Commonwealth of Puerto Rico" include Alaska, Hawaii, Puerto Rico, the Virgin Islands of the U. S., the Panama Canal Zone, American Samoa, Guam, the Trust Territories which include the Mariana (less Guam), Caroline, and Marshall Islands, and other possessions, including Baker, Howland, Jarvis, Canton, Enderbury, Johnson, Midway, and Wake Islands.

§ 1057.103 *Authority.* Procurement action reports are required by Congress as stipulated in Title 10, USC 2304, by letter February 19, 1948, from the President of the United States to the Secretary of Defense, and by the Office of Assistant Secretary of Defense (Supply and Logistics).

(Sec. 8012, 70A Stat. 488; 10 U. S. C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

[SEAL] CHARLES M. MCDERMOTT,
Colonel, USAF, Deputy Director of Administrative Services.

[F. R. Doc. 58-9077; Filed, Oct. 31, 1958; 8:49 a. m.]

Chapter XIV—The Renegotiation Board

Subchapter B—Renegotiation Board Regulations Under the 1951 Act

PART 1457—FISCAL YEAR BASIS FOR RENEGOTIATION AND EXCEPTIONS

PART 1470—INFORMATION REQUIRED OF CONTRACTORS

MISCELLANEOUS AMENDMENTS

A. Part 1457 is amended as follows:

Section 1457.5 (f) *Other price adjustments* is amended by inserting "(1)" before "Title II" in the first sentence, and by adding a new subparagraph (2) to read as follows:

(2) Public Law 85-804, approved August 28, 1958, provides that "the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein." Unless otherwise exempted, amounts received or accrued by a contractor pursuant to the exercise of such authority under a contract with one of the Departments named in or pursuant to section 102 (a) of the Act, as amended, are subject to the procedures set forth in paragraphs (b), (c) and (d) of this section.

B. Part 1470 is amended in the following respects:

1. Section 1470.3 (h) *Filing on a consolidated basis* is amended by changing the period at the end of the second sentence thereof to a colon, and adding to that sentence the following: *"Provided,* That the fiscal years of all members of such group begin and end respectively on the same dates."

2. The Statement of Non-Applicability form, § 1470.91 (b) *For fiscal years ending after June 30, 1956,* is amended in the following respects:

a. Delete from the second sentence of paragraph 1 the word "such" and insert in lieu thereof "the renegotiable" and, after the word "accruals" insert "of the undersigned."

b. In the third sentence of paragraph 1, after the word "excluded" insert the following: "exempt sales, including those referred to in paragraph 7 below,".

c. Renumber paragraphs 5, 6 and 7 to be paragraphs 6, 7 and 8, respectively, and insert a new paragraph 5 to read as follows:

5. Method of accounting employed:
Federal tax return: Cash ( ) Accrual ( ) Completed contract ( ).
This report: Cash ( ) Accrual ( ) Completed contract ( ).

d. Delete in its entirety paragraph 7, as renumbered, and insert in lieu thereof the following:

7. The Standard Commercial Article Exemption: Has not been self-applied by us ( ) Has been self-applied by us ( ) (to otherwise renegotiable sales) in the estimated amount of $----------

e. Under the heading "Instructions", (1) change "Item 6" appearing in the parenthetical sentence immediately under the heading, to read "Paragraph 7", (2) insert "items" after the word "following" in the next sentence, and (3) at the end of the first sentence of the paragraph immediately following rule (e), change the period to a colon and add to that sentence the following: *"Provided,* That the fiscal years of all members of such group begin and end respectively on the same dates."

(Sec. 109, 65 Stat. 22; 50 U. S. C. App. 1219)

Dated: October 29, 1958.

THOMAS COGGESHALL,
Chairman.

[F. R. Doc. 58-9074; Filed, Oct. 31, 1958; 8:48 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 729—PEANUTS

ALLOTMENT AND MARKETING QUOTA REGULATIONS FOR 1959 AND SUBSEQUENT CROPS

GENERAL

Sec.
729.1010 Basis and purpose.
729.1011 Definitions.
729.1012 Extent of calculations and rule of fractions.
729.1013 Instructions and forms.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

729.1014 Determination of farm data.
729.1015 Basis of farm allotment.
729.1016 Determination of adjusted acreage.
729.1017 Reserves for late allotments and corrections.
729.1018 Allotments for old farms.
729.1019 Reconstitutions.
729.1020 Normal yields.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

729.1021 Allotments for new farms.
729.1022 Normal yields for new farms.

MISCELLANEOUS (ALLOTMENTS)

729.1023 Reduction of acreage allotment for violation of the marketing quota regulations for a prior marketing year.
729.1024 Release and reapportionment.
729.1025 Reallocation of allotments released from farms removed from agricultural production.

AUTHORITY: §§ 729.1010 to 729.1064 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 361–368, 372–374, 376, 388, 52 Stat. 38, as amended, 62–64, as amended, 65, as amended, 66, as amended, 88, secs. 358, 359, 55 Stat. 88, as amended, 90, as amended, secs. 106, 112, 377, 70 Stat. 191, 195, 206, as amended; 7 U. S. C. 1301, 1358, 1359, 1361–1368, 1372–1374, 1376, 1377, 1388, 1824, 1836.

GENERAL

§ 729.1010 *Basis and purpose.* The regulations contained in §§ 729.1010 through 729.1064 completely revise for the 1959 and subsequent crops of peanuts the Allotment and Marketing Quota Regulations for Peanuts of the 1957 and Subsequent Crops, (21 F. R. 9370; 22 F. R. 6987, 8475; 23 F. R. 1567, 6545, 7599). The regulations of this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, (7 U. S. C. 1281 et seq.), hereinafter referred to as the Act, and govern the establishment of farm allotments and normal yields, the determination of farm peanut acreages, the issuance of marketing cards, the identification of peanuts, the collection and refund of penalties, and the records and reports incident to administration of peanut allotment and marketing quota programs. The regulations contained in §§ 729.1010 through 729.1064 shall apply to the 1959 and subsequent crops of peanuts and shall remain in effect until amended, superseded or cancelled, except that §§ 729.1041 through 729.1064 relating to marketing quotas shall not be effective with respect to any crop of peanuts for which producers have disapproved quotas in a referendum held pursuant to section 358 (b) of the act. The Allotment and Marketing Quota Regulations for Peanuts of the 1957 and Subsequent Crops of Peanuts (21 F. R. 9370; 22 F. R. 6987, 8475; 23 F. R. 1567, 6545, 7599) shall remain in full force and effect for the 1957 and 1958 crops of peanuts. The purpose of the regulations in §§ 729.1010 through 729.1064 is to provide the procedure for effectively administering the peanut allotment and marketing quota provisions set forth in the Act. It is essential that farm operators be notified of 1959 peanut allotments as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice, public procedure and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001–1011) is impracticable and contrary to the public interest and the regulations specified below shall become effective upon the filing of this document with the Director, Division of the Federal Register.

§ 729.1011 *Definitions.* As used in §§ 729.1010 through 729.1064 and in all instructions, forms and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires:

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended, and supplemented.

(b) "Areas" mean the following:

(1) The Southeastern Area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) "Base period" means the three calendar years immediately preceding either the year for which farm allotments are currently being established or the program year otherwise being considered under provisions of the peanut allotment and marketing quota program.

(d) "Buyer" means a person who:

(1) Buys or otherwise acquires peanuts from a producer;

(2) Buys or otherwise acquires farmers stock peanuts from any person; or

(3) Markets, as a commission merchant, broker, or cooperative any peanuts for the account of a producer and who is responsible to the producer for the amount received for the peanuts.

(e) "Current year" means the calendar year for which allotments are being established or for which the farm is being considered under provisions of the peanut allotment and marketing quota program.

(f) "Director" means the Director or the Acting Director of the Oils and Peanut Division, Commodity Stabilization Service, United States Department of Agriculture.

(g) "Effective farm allotment" means the "farm allotment" as hereinafter defined minus any part of such allotment released to the county committee and any reduction in allotment resulting from violation of marketing quota regulations in a prior year or plus any acreage added by the county committee through reapportionment of released acreage, any increase granted for types of peanuts determined to be in short supply and any acreage of peanuts authorized for experimental purposes pursuant to § 729.1048 (e). The effective farm allotment shall be one acre for a farm for which a farm allotment was not established, or for which an allotment of one acre or less was established, if each of the following conditions is met:

(1) The acreage harvested for nuts is one acre or less;

(2) The producers who share in the peanuts on the farm do not share in the peanuts produced on any other farm.

(h) "Excess acreage" means the acreage by which the final acreage exceeds the effective farm allotment. The excess acreage for the farm shall be zero in any case where each of the following conditions exist:

(1) Through error on the part of the State or county office, the operator was officially notified in writing of an allotment larger than the finally approved effective farm allotment;

(2) The county committee finds that the operator, acting solely on the basis of the information contained in the erroneous notice, picked or thrashed peanuts from acreage in excess of the finally approved effective farm allotment but not in excess of the allotment stated in the erroneous notice;

(3) The extent of error in the erroneous notice was such that the operator would not reasonably be expected to question the allotment of which he was erroneously notified; and

(4) The State administrative officer concurs in the county committees finding.

Where the operator received his corrected notice of allotment after the peanuts were planted but before they were picked or threshed, the excess acreage shall be zero if the acreage picked or threshed does not exceed the allotment stated in the erroneous notice, provided the county committee and State administrative officer determine that the acreage planted for picking or threshing was in excess of the allotment only because the operator was given an erroneous notice of allotment.

(i) "Excess peanuts" mean peanuts in excess of the farm marketing quota determined pursuant to § 729.1041 (b).

(j) "Farm allotment" means the farm peanut acreage allotment for the current

year crop of peanuts established pursuant to §§ 729.1010 through 729.1022 plus any revision in allotment granted pursuant to § 729.1028.

(k) "Farm peanut acreage", herein referred to as "final acreage", means the acreage on the farm planted to peanuts excluding any acreage not picked or threshed as determined by the county office manager in accordance with subparagraph (1), (2) or (3) of this paragraph, and any acreage from which the peanuts are dug and marketed by the producer before drying or removal of moisture from such peanuts either by natural or artificial means for consumption exclusively as boiled peanuts, herein referred to as "green peanuts", as determined by the county office manager in accordance with subparagraph (4) of this paragraph.

(1) If any of the acreage planted to peanuts on the farm is to be hogged-off, the farm operator shall so notify the county office manager, who will arrange to have the hogged-off acreage inspected by a representative of the county committee to determine if any of the peanuts from the hogged-off acreage have been or can be dug. Either the hogged-off acreage or the picked or threshed acreage shall be measured to establish the exact acreage picked or threshed. However, if the acreage planted to peanuts on a farm is not in excess of the effective farm allotment the county office manager may accept the operator's estimate of the acreage to be hogged-off, in which case, the remaining acreage will be the final acreage. If the farm operator fails to notify the county office manager that an acreage of peanuts on the farm is to be hogged-off, and therefore a representative of the county committee does not inspect the acreage claimed to have been hogged-off in sufficient time to make a positive determination, the entire planted acreage of peanuts on the farm subject to the provisions of subparagraphs (2), (3) and (4) of this paragraph shall be the final acreage.

(2) If any acreage planted to peanuts on the farm is to be left in the ground the farm operator shall so notify the county office manager who will arrange to have such acreage inspected at a time when the nuts can no longer be removed from the ground by digging to determine if any peanuts from such acreage have been dug. Either the acreage of peanuts left in the ground or the picked or threshed acreage of peanuts shall be measured to determine the exact picked or threshed acreage. However, if the planted acreage is not in excess of the effective farm allotment the county office manager may accept the operator's estimate of the acreage to be left in the ground, in which case, the remaining acreage will be the final acreage. If the farm operator fails to notify the county office manager that an acreage of peanuts on the farm is to be left in the ground, and therefore a representative of the county committee does not inspect the acreage claimed to have been left in the ground in sufficient time to make a positive determination, the entire planted acreage of peanuts on the farm, subject to the provisions of subparagraphs (1), (3) and (4) of this paragraph, shall be the final acreage.

(3) Any acreage of peanuts that is dug, except the acreage dug under provisions of subparagraph (4) of this paragraph, shall be considered as picked or threshed. The picked or threshed acreage may be adjusted, within the limits prescribed in subparagraph (5) of this paragraph, provided the farm operator:

(i) Notifies the county office manager of his intention to dispose of dug peanuts by means other than picking or threshing;

(ii) Arranges with the county office manager for a representative of the county committee to witness the disposition of the dug peanuts. Nuts and vines that are chopped or ground before baling or before storing for later use as feed shall not be considered as picked or threshed peanuts; and

(iii) Furnishes satisfactory evidence from which the percentage of the total farm peanut production represented by the quantity of dug peanuts which have not been and cannot in the future be picked or threshed can be determined. Such percentage of the acreage of dug peanuts shall be the acreage to be deducted from the planted acreage under the provisions of this subparagraph.

(4) If any peanuts on the farm are to be marketed as green peanuts the farm operator shall so notify the county office manager. If the acreage planted to peanuts on the farm is not in excess of the effective farm allotment the county office manager may accept the farm operator's estimate of the acreage on which such green peanuts were produced, in which case, the remaining acreage, subject to the provisions of subparagraphs (1), (2) and (3) of this paragraph and § 729.1056 (b), will be the final acreage. Where the entire production of peanuts on the farm is to be marketed as green peanuts, the final acreage (subject to the provisions of § 729.1056 (b)) will be "zero". Where the acreage planted to peanuts on the farm is in excess of the effective farm allotment and a portion of the peanuts produced on such farm are to be marketed as green peanuts, the acreage on which such green peanuts are produced may be deducted from the acreage planted to peanuts on the farm in determining the final acreage provided such acreage is measured and the requirements of § 729.1056 (b) are met. The estimated cost of measurement shall be paid by the producer.

(5) Notwithstanding the foregoing provisions of this section the final acreage shall be considered equal to the effective farm allotment on a farm if the acreage in excess of the effective farm allotment from which peanuts are picked or threshed is not greater than one-tenth acre or three percent of the effective farm allotment, whichever is larger; but the provisions of this subparagraph shall not apply unless a quantity of peanuts equal to the county office manager's estimate of the production from the acreage in excess of the effective farm allotment, is disposed of on the farm in a manner approved by the county committee so that the peanuts cannot thereafter be used or marketed as peanuts: *Provided, further,* That these acreage limits shall not be applicable if the State committee concurs in findings and recommendations of the county committee that the excess acreage was picked or threshed notwithstanding a bona fide effort on the part of the producer to comply with the effective farm allotment.

(l) "Farm peanut history acreage" means the sum of (1) the final acreage (adjusted to compensate for abnormal conditions affecting acreage if the county committee determines that such action is necessary to maintain equitable allotments), (2) the acreage diverted from the production of peanuts under provisions of the Soil Bank Act (70 Stat. 188, 191, 195), (3) the acreage temporarily released to the county committee under provisions of § 729.1024, and (4) the amount of any reduction in the current year allotment made pursuant to the provisions of § 729.1023; except that, the farm peanut history acreage for any year shall not exceed the farm peanut allotment for such year: *Provided,* That for 1956 the farm peanut history acreage shall be equal to the farm allotment if the farm owner or operator requested in writing preservation of unused allotment on or before June 1 of such year. For each year within the period 1957–1959 inclusive the farm peanut history acreage shall be equal to the farm allotment.

(m) "Farmers stock peanuts" means picked or threshed peanuts produced in the continental United States which have not been shelled, crushed, cleaned or otherwise changed from the state (except for removal of foreign material and excess moisture) in which picked or threshed peanuts are customarily marketed by producers.

(n) "Inspection service" means the service established and conducted under the regulations contained in Part 51 of Chapter I of this title for the determination and certification or other identification of the grade, quality, or condition of products.

(o) "Market" means to dispose of peanuts including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to him by anyone.

(p) "Marketing cards" mean the following:

(1) "Excess penalty card". Form MQ–77—Peanuts, Peanut Excess Penalty Marketing Card, will be issued for farms for which it is determined that the final acreage is in excess of the effective farm allotment. Each lot of peanuts identified by an excess penalty card is subject to the marketing penalty prescribed in § 729.1050 at the time the peanuts are marketed.

(2) "Within quota card". Form MQ–76—Peanuts, Peanut Within Quota Mar-

keting Card, will be issued for farms for which it is determined that the final acreage is not in excess of the effective farm allotment. A within quota card authorizes the marketing of all peanuts produced on the farm without payment at the time of marketing of the penalty prescribed in § 729.1050.

(q) "Marketing year" means for each crop of peanuts the period beginning August 1 of the current year and ending July 31 of the following year.

(r) "New farm" means a farm for which an application for an allotment is filed pursuant to the provisions of § 729.1021 and the following conditions are met:

(1) For that portion of the base period consisting of 1958 and prior years, no peanuts were picked or threshed from the farm and no farm peanut history acreage was preserved under provisions of the Soil Bank Act (70 Stat. 188, 191, 195) or section 377 of the act; and

(2) For that portion of the base period consisting of 1959 and/or subsequent years, the acreage of peanuts produced on the farm, if any, consists solely of acreage in excess of the farm allotment.

(s) "Offices": (1) "ASC County Office" means the office of the Agricultural Stabilization and Conservation county committee.

(2) "ASC State Office" means the office of the Agricultural Stabilization and Conservation State committee. The address of the ASC State offices of the peanut-producing States are:

Old Post Office Building, Montgomery, Alabama.

Main Post Office Building, Central Avenue and Fillmore Street, P. O. Box 2313, Phoenix, Arizona.

387 Federal Office Building, P. O. Box 2781, Little Rock, Arkansas.

2020 Milvia Street, Berkeley 4, California.

Cheops Building, 35 North Main Street, Gainesville, Florida.

Old Post Office Building, P. O. Box 1552, Athens, Georgia.

1517 Sixth Street, Alexandria, Louisiana.

P. O. Box 1251, 420 Milner Building, 200 South Lamar Street, Jackson 5, Mississippi.

I. O. O. F. Building, 10th and Walnut Streets, Columbia, Missouri.

1015 Tijeras Avenue NW., P. O. Box 1706, Albuquerque, New Mexico.

State College Station, Raleigh, North Carolina.

Agricultural Center Office Building, Stillwater, Oklahoma.

P. O. Box 660, Associates Building, Seventh Floor, 901 Sumter Street, Columbia 1, South Carolina.

Room 579—U. S. Courthouse, Nashville 3, Tennessee.

U. S. D. A. Building, College Station, Texas.

900 North Lombardy Street, Richmond 20, Virginia.

(t) "Old farm" means:

(1) A farm on which peanuts were picked or threshed in 1956, 1957, or 1958 if any such year is an applicable year in the base period; or

(2) Any farm for which an allotment was established for one or more years of the base period and for which the farm peanut history acreage for one or more of such years is any acreage other than "zero", including also any farms for which old farm allotments were established or which were eligible for old farm allotments for the preceding year, if peanuts were planted for harvest for nuts on any such farm in any year during the base period and the county committee determines that no peanuts were picked or threshed from the farm in any such year because of abnormal conditions affecting production. For 1956 and subsequent years any part of the farm peanut allotment which is diverted from the production of peanuts under provisions of the Soil Bank Act (70 Stat. 188, 191, 195) shall be considered as picked or threshed peanut acreage for purposes of this paragraph. For 1956 the entire farm allotment shall be considered to have been picked or threshed for purposes of this paragraph if the farm owner or operator requested in writing preservation of allotment history acreage on or before June 1 of such year. For each year within the period 1957–1959 inclusive the entire farm allotment, less the acreage released to the county committee, shall be considered to have been picked or threshed for purposes of this paragraph.

(u) "Peanuts" means all peanuts produced, excluding any peanuts which it is established by the producer or otherwise, in accordance with this part, were not picked or threshed either before or after marketing from the farm or were marketed by the producer before drying or removal of moisture from such peanuts either by natural or artificial means for consumption exclusively as boiled peanuts.

(v) "Pound" means that quantity of farmers stock peanuts equal to one pound standard weight. If peanuts have been graded at the time of marketing, the poundage shall be the weight thereof excluding foreign material and excess moisture (excess moisture means moisture in excess of seven percent in the Southeastern and Southwestern areas and eight percent in the Virginia-Carolina area). If shelled peanuts are marketed, the poundage thereof shall be converted to the weight of farmers stock peanuts by multiplying the number of pounds of shelled peanuts by 1.5 and the result shall be the number of pounds of peanuts considered as marketed.

(w) "Preceding year" means the calendar year immediately preceding the year for which allotments are being established or the year for which the farm is otherwise being considered under provisions of the peanut allotment and marketing quota program.

(x) "Producer" means a person who is entitled to share in the peanuts produced on the farm or in the proceeds thereof.

(y) "Quota peanuts" means peanuts which are within the amount of the farm marketing quota determined pursuant to § 729.1041.

(z) "Sales memorandum" means:

(1) Form MQ–93—Peanuts, which (i) may be used to record and report purchases of peanuts which are not inspected by the Inspection Service, (ii) shall be used to record and report the shelling of excess peanuts for producers in cases where the sheller retains all or a part of the shelled peanuts, (iii) shall be used to record and report the shelling of any peanuts for producers pursuant to § 729.1058 (b), and (iv) shall be used to record and report the purchase of farmers stock peanuts which are not identified by a valid marketing card.

(2) Form MQ–94—Peanuts, which may be used by buyers to record data with respect to purchases of peanuts which have been inspected by the Inspection Service.

(3) Excess Penalty Memorandum, eight copies of which are attached to each Form MQ–77. This form shall be used by buyers to report data with respect to purchases of excess peanuts identified by Form MQ–77.

(4) Buyers own form, which may be used to record or to report data with respect to the purchase of any peanuts (except the report to the ASC State office covering the purchase of peanuts identified by use of an Excess Penalty Card, Form MQ–77—Peanuts), provided such form is serially numbered and is executed to show data as prescribed in § 729.1057 (a) (1).

(aa) "Seed sheller" means a person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent years crop.

(bb) "Tillable acreage available" means the acreage of cropland on the farm which the county committee determines is available for the production of peanuts in the current year, taking into consideration land uses and other crops grown on the farm and customary crop-rotation practices: *Provided*, That the tillable acreage available for the production of peanuts for a farm shall not exceed the cropland on the farm minus the total of the current year acreage allotments established for other crops for the farm. If the current year acreage allotments for one or more crops are not established for the farm prior to the determination of the tillable acreage available and it has been announced that acreage allotments will be in effect, the farm acreage allotments established for such crops for the last year allotments were in effect shall be used.

(cc) "Tillable acreage factor" means the percentage of the tillable acreage available as determined by the county committee which is customarily allotted for the production of peanuts in a county. A tillable acreage factor may be determined on a community basis if the county committee determines there is a wide variation between communities in the county in the percentage of the tillable acreage available that is customarily allotted for the production of peanuts.

(dd) "Normal yield" means the normal yield per acre for the farm as determined under § 729.1020 or § 729.1022, whichever is applicable.

(ee) "Actual yield" means the actual yield per acre for the farm obtained by dividing the final acreage into the total production of peanuts for the farm.

(ff) The following words and phrases have the meanings assigned to them in the regulations contained in Part 719 of this chapter: "Combination", "Community Committee", "County Committee", "State Committee", "County Office Manager", "Cropland", "Deputy Administrator", "Division", "Farm", "Oper-

ator", "Person", "Reconstitution", "Secretary", and "State Administrative Officer".

§ 729.1012 *Extent of calculations and rule of fractions.* (a) Farm allotments shall be rounded to the nearest one-tenth acre. Fractions of fifty-one thousandths of an acre or more shall be rounded upward, and fractions of fifty thousandths of an acre or less shall be dropped. For example; 8.051 would be 8.1 and 8.050 would be 8.0.

(b) The final acreage shall be expressed in tenths of an acre and fractions of less than one-tenth of an acre shall be dropped. For example; 8.09 would be 8.0.

(c) The percentage of excess peanuts for a farm, hereinafter referred to as "percent excess" shall be expressed in tenths of a percent and fractions of less than one-tenth of a percent shall be dropped, except that the minimum percent excess for a farm having any excess acreage shall be one-tenth of one percent.

(d) The converted penalty rate (see § 729.1050 (b)) shall be expressed in tenths of a cent and fractions of less than a tenth of a cent shall be dropped, except that the minimum converted penalty rate for a farm having any excess acreage shall be one-tenth of a cent.

(e) The amount of penalty with respect to any lot of peanuts, or the amount of damages due Commodity Credit Corporation under an agreement made pursuant to § 729.1054 shall be expressed as dollars and in whole cents. Fractions of less than a cent shall be dropped.

(f) The quantity of peanuts marketed, the farm marketing quota, and the normal and actual yield per acre, shall be expressed in whole pounds. Fractions of less than a pound shall be dropped.

§ 729.1013 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations contained in §§ 729.1010 through 729.1064. The forms and instructions shall be approved by, and the instructions shall be issued by the Deputy Administrator.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR OLD FARMS

§ 729.1014 *Determination of farm data.* The county committee shall obtain or determine the following information and data for each old farm.

(a) The name and address of the operator.

(b) The total acreage of all land in the farm.

(c) The acreage of cropland in the farm.

(d) The final acreage of peanuts for each year during the base period.

(e) The farm peanut history acreage for each year during the base period.

(f) The peanut acreage allotment for the farm for the preceding year.

(g) Such other information and data as may be necessary to carry out the provisions of §§ 729.1010 through 729.1064.

The information and data provided for in this section shall be obtained from acreage measurements and other records in the ASC county office, or if not available from these sources, these data and information may be obtained from reports made by operators or other interested persons or may be appraised or determined by the county committee on the basis of production and marketing records or other available information.

§ 729.1015 *Basis of farm allotment.* A farm allotment shall be determined for each old farm on the basis of the following factors as hereinafter applied: the preceding year peanut acreage allotment for the farm; the farm peanut history acreages for each of the years during the base period; abnormal conditions affecting the final acreage of peanuts; tillable acreage available; labor and equipment available for the production of peanuts on the farm; crop-rotation practices; and soil and other physical factors affecting the production of peanuts: *Provided, however,* That in establishing farm allotments pursuant to §§ 729.1010 through 729.1029, the following acreages shall not be taken into consideration: the peanut acreage harvested in excess of the farm allotment established for each of the years during the base period and the peanut acreages harvested or the acreage allotments established as a result of allotments made under provisions of §§ 729.725, 729.727, 729.825, 729.827, 729.1024 and 729.1026: *And provided, further,* That an allotment shall not be determined for any farm on which one acre or less of peanuts was harvested (including acreage on which history was preserved under provisions of the Soil Bank Act (70 Stat. 188, 191, 195), or section 377 of the act) in each year of the base period, unless (a) the measured acreage of peanuts on the farm, determined pursuant to § 729.1040 is in excess of one acre, or (b) unless the measured acreage of peanuts on the farm, determined pursuant to § 729.1040 is one acre or less and the producers who share in the peanuts on the farm also share in the peanuts produced on another farm. The acreage needed to establish allotments for farms under this proviso shall be deducted from the State reserve established pursuant to § 729.1017.

§ 729.1016 *Determination of adjusted acreage.* The county committee shall determine adjusted acreages for old farms in the county as follows:

(a) If peanuts were produced in 1958 on a farm for which no farm allotment was established because no peanuts were produced on such farm during each of the years 1955 through 1957, for the purpose of determining a 1959 farm allotment for such farm, the county committee shall, on the basis of tillable acreage available, labor and equipment available for the production of peanuts, crop-rotation practices and soil and other physical factors affecting the production of peanuts, determine an adjusted acreage for the farm which is fair and equitable in comparison with the adjusted acreages for other farms in the community which are similar with respect to such factors: *Provided, however,* Such adjusted acreage determined for the farm shall not exceed 75 percent of the result obtained by multiplying the tillable acreage available for the farm by the tillable acreage factor.

(b) Excluding farms described in paragraph (a) of this section, the county committee shall adjust farm peanut history acreages for the preceding year and establish adjusted acreages as provided below:

(1) The county committee shall examine the farm peanut history acreage for the preceding year and if abnormal conditions affected such acreage, the farm peanut history acreage shall be increased to compensate for any reduction in the acreage resulting from such abnormal conditions; however, the acreage as so increased shall not, if the acreage planted to peanuts on the farm is less than the farm allotment, exceed the larger of 75 percent of the farm allotment or the acreage planted to peanuts on the farm. If the acreage planted to peanuts on the farm exceeds the farm allotment the acreage as so increased shall not exceed the farm allotment.

(2) If a farm allotment was not established for the preceding year for a farm which was eligible to receive an allotment for the preceding year, the county committee shall determine an acreage for the farm which shall be considered the preceding year farm allotment for purposes of establishing an adjusted acreage for the farm. Such acreage shall be established in accordance with the marketing quota regulations applicable to the crop of peanuts produced in the preceding year.

(3) The county committee shall compare the farm peanut history acreage for the preceding year for each farm with the farm allotment established for the preceding year. If the farm peanut history acreage for the farm is less than 75 percent of the farm allotment, a total of the farm peanut history acreages for the three years of the base period shall be determined. The total acreage so determined shall be divided by 3, except that if a farm allotment was established for the farm for only two years of the base period the total shall be divided by 2 or if a farm allotment was established for the farm for only one year of the base period the total shall be divided by 1. If the average of the farm peanut history acreages for the farm, determined in accordance with this subparagraph is less than the preceding year allotment established for the purpose of determining the adjusted acreage for the farm, the average of the farm peanut history acreages shall be considered as the preceding year farm allotment for purposes of this section.

(4) The county committee shall examine the preceding year farm allotment for each farm after adjustments, if any, have been made under subparagraph (3) of this paragraph and may adjust such allotments downward if it determines that such adjustment is necessary to obtain an adjusted acreage for the farm which is comparable with the adjusted acreages established for other old farms in the community which are similar as to the tillable acreage available for the production of peanuts. If a downward

adjustment is made, the adjusted acreage for the farm shall be not less than the smaller of (i) the result obtained by multiplying the tillable acreage available for the farm by the tillable acreage factor, or (ii) the average peanut history acreage for the farm for the three years of the base period.

(5) An acreage not in excess of 10 percent of the preceding year State peanut acreage allotment shall be made available to the county committee by the State committee for making upward adjustments. The county committee shall examine the preceding year farm allotment for each farm after adjustment, if any, has been made under subparagraph (3) of this paragraph and may adjust such allotment upward if it determines that such adjustment is necessary to obtain an adjusted acreage for the farm which is comparable with the adjusted acreage established for other similar old farms in the community. Upward adjustments shall be made on the basis of the farm peanut history acreages for the base period; tillable acreage available; labor and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts. The county committee may use the sum of the downward adjustments made in accordance with subparagraph (4) of this paragraph in addition to the acreage available under this subparagraph for making upward adjustments. If an upward adjustment is made, the adjusted acreage for the farm shall not exceed the larger of (i) the result obtained by multiplying the tillable acreage available for the farm by the tillable acreage factor, or (ii) the largest farm peanut history acreage for the farm for any year of the base period: *Provided, however*, That such limitation shall not be applicable if the State and county committees find that the adjusted acreage as determined under the limitation is relatively smaller in relation to the farm peanut history acreages for the base period, the tillable acreage available, and the labor and equipment available for the production of peanuts on the farm, than the adjusted acreages for other old farms in the community which are similar with respect to such factors.

(6) The adjusted acreage for each old farm in the county shall be the preceding year farm allotment plus or minus any upward or downward adjustment made pursuant to subparagraphs (4) and (5) of this paragraph.

(c) The adjusted acreage determined for the farm in accordance with the foregoing provisions of this section shall not exceed the tillable acreage available for the farm.

§ 729.1017 *Reserves for late allotments and corrections.* The county committee shall estimate the acreage that will be needed in the county (a) to establish allotments for old farms on which not more than one acre of peanuts was picked or threshed in any year during the base period if either of the following conditions are met: (1) The measured acreage of peanuts on the farm determined pursuant to § 729.1040 is in excess of one acre, or (2) the measured acreage of peanuts on the farm determined pursuant to § 729.1040 is one acre or less and the producers who share in the peanuts on the farm also share in the peanuts produced on another farm, and (b) for the correction of errors in farm allotments. The reserve for late allotments and corrections recommended by the county committee shall be subject to adjustment by the State committee and shall be held as a State reserve.

§ 729.1018 *Allotments for old farms.* The farm allotment for each old farm shall be calculated by multiplying the adjusted acreage for each such old farm (determined pursuant to § 729.1016) by a factor determined by the State committee by dividing the total of the adjusted acreages for all old farms in the State into the current year State peanut acreage allotment (minus the acreage reserve for late allotments and corrections determined pursuant to § 729.1017.

§ 729.1019 *Reconstitutions.* Allotments for farms which are divided or combined shall be determined pursuant to regulations in Part 719 of this chapter.

§ 729.1020 *Normal yields*—(a) *County.* Each year the State committee shall determine a county normal yield for each peanut producing county. The normal yield for any county shall be the average yield per acre of peanuts for the county, adjusted for abnormal weather conditions, during the five calendar years immediately preceding the year in which such normal yield is determined. If for any year in the five-year period, production data are not available, or there was no actual yield, an appraised yield for such year shall be determined by the State committee on the basis of yields obtained in similar nearby counties during such year and shall be used as the actual yield for such year. If, on account of drought, flood, insect pests, plant disease, or other uncontrollable natural cause, the yield in any year of the five-year period is less than 75 per centum of the average (computed without regard to such year) such year shall be eliminated in calculating the county normal yield per acre. The most reliable yield data available to the State committee from its own records and from the Agricultural Marketing Service shall be used in computing county normal yields.

(b) *Farm.* The normal yield for a farm shall be determined by the county committee and shall be the average yield per acre of peanuts for the farm, adjusted for abnormal weather conditions, during the five calendar years immediately preceding the year in which the normal yield is determined. If for any such year the data are not available or there is no actual yield, then the normal yield for the farm shall be appraised by the county committee, taking into consideration soil and other physical factors, abnormal weather conditions, the normal yield for the county, and the yield for the farm in years for which data are available. Farm normal yields shall be approved by the State committee.

ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR NEW FARMS

§ 729.1021 *Allotments for new farms.* (a) The farm allotment for a new farm shall be that acreage which the county committee, with the approval of the State committee, determines is fair and reasonable for the farm, taking into consideration the peanut-growing experience of the producer(s) on the farm; the tillable acreage available; labor and equipment available for the production of peanuts on the farm; crop-rotation practices; and soil and other physical factors affecting the production of peanuts. The farm allotment for a new farm shall not exceed the result obtained by multiplying the tillable acreage available for the farm by the tillable acreage factor: *Provided, however*, That such limitation shall not be applicable if the State and county committees find that the allotment determined for the farm under the limitation is relatively smaller in relation to the tillable acreage available, labor and equipment available for the production of peanuts on the farm, and crop-rotation practices, than the allotments established for other farms in the community which are similar with respect to such factors: *And provided further*, That the allotment determined under this section shall be reduced to the final acreage when it is determined that such acreage is less than the allotment.

(b) Notwithstanding any other provisions of this section, an allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) An application for a new farm allotment is filed by the farm operator and farm owner with the county committee on or before February 15 of the calendar year for which application for an allotment is being filed;

(2) A producer on the farm shall have had experience in growing peanuts either as a sharecropper, tenant, or as a farm operator or farm owner during at least two of the five years immediately preceding the current year: *Provided, however*, That a producer who was in the armed services after September 16, 1940, shall be deemed to have met the requirements hereof if he has had experience in growing peanuts during one year either within the five years immediately prior to his entry in the armed services or within the five years immediately following his discharge from the armed services and if he files an application for an allotment within five years from date of discharge. In making a determination of any producer's experience in growing peanuts no credit shall be given for the producers interest, in 1959 or a subsequent year, in peanuts grown on a farm for which no farm allotment is established for such year;

(3) The farm operator is largely dependent on the farm for his livelihood; and

(4) The farm is the only farm owned or operated by the farm operator or farm owner for which a farm allotment is established for the current year.

(c) Beginning with the reserve which is set aside to provide allotments for new

farms for 1959, one-sixth of one percent of the national peanut acreage allotment shall be available for establishing allotments for new farms; except that, if the total of the acreages required to establish allotments and reserves for old farms hereunder in any State is less than the State allotment, the balance of each State allotment shall, upon approval by the Director, be available for establishing allotments for new farms in the State. If the total of the acreage allotments for new farms as determined by the State and county committees pursuant to this section exceeds the acreage reserved for new farm allotments, such acreage shall be made available to the States for establishing new farm allotments as follows:

(1) For any State for which the total of the new farm allotments determined by the State and county committees does not exceed the State's proportionate share of the national new farm reserve (determined by tentatively apportioning such reserve among the States on the same basis as the national allotment, less the new farm reserve, was apportioned for the current year), no adjustment will be made in the new farm allotments determined by the State and county committees and there shall be made available to each such State an acreage equal to the total of the new farm allotments;

(2) For any State for which the total of the new farm allotments determined by the State and county committees exceeds the State's proportionate share of the national new farm reserve (determined by tentatively apportioning such reserve among the States on the same basis as the national allotment, less the new farm reserve, was apportioned for the current year), there shall be made available for new farm allotments in each such State an acreage equal to the State's proportionate share of the national new farm reserve;

(3) The acreage remaining after making the apportionments under subparagraphs (1) and (2) of this paragraph shall be apportioned pro rata among the States receiving acreage under subparagraph (2) of this paragraph on the basis of the total acreage determined for new farm allotments by the State and county committees that is in excess of the acreage made available under subparagraph (2) of this paragraph. The farm allotments determined by the State and county committees for new farms which receive acreage under subparagraph (2) of this paragraph shall be adjusted downward so that the total of the acreage allotments for such farms shall not exceed the acreage made available to the State for establishing allotments for such farms; and

(4) If the total of the acreage required to establish fair and reasonable allotments and reserves for all old farms in the State and for all new farms in the State that meet the eligibility requirements set forth in paragraph (b) of this section is less than the State acreage allotment plus the acreage allocated to new farms in the State under this section, the balance of such acreage shall, upon approval of the Director, be available for establishing allotments, on the basis of factors specified in § 729.1021 (a), for other new farms if each of the following conditions has been met:

(i) An application for an allotment is filed by the farm operator and farm owner with the county committee on or before March 1 of the calendar year for which application for an allotment is being filed;

(ii) The farm operator is largely dependent on the farm for his livelihood; and

(iii) The farm is the only farm owned or operated by the farm operator or farm owner for which a farm allotment is established for the current year.

(5) Not more than one per centum of the national acreage allotment shall be apportioned among new farms.

§ 729.1022 *Normal yields for new farms.* The normal yield for a new farm shall be that yield per acre which the county committee determines on the basis of the factors set forth in § 729.1020 (b). Normal yields for new farms shall be approved by the State committee.

MISCELLANEOUS (ALLOTMENTS)

§ 729.1023 *Reduction of acreage allotment for violation of the marketing quota regulations for a prior marketing year.* (a) If peanuts are marketed or are permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which in fact were produced on a different farm, the acreage allotments next established for both such farms shall be reduced, as hereinafter provided, except that such reduction for any farm shall not be made if the county committee determines that no person connected with such farm caused, aided, or acquiesced in such marketings.

(b) If proof of the disposition of any amount of peanuts is not furnished as required by these regulations in this part, the acreage allotment next established for the farm shall be reduced, as hereinafter provided, except that if the operator establishes to the satisfaction of the State and county committees that failure to furnish proof of disposition was unintentional on his part and that he could not reasonably have been expected to furnish accurate proof of disposition, reduction of the allotment will not be required if the failure to furnish proof of disposition is corrected and payment of all additional penalty due is made.

(c) Any reduction made under this section shall be made with respect to the current year farm allotment, provided it can be made 30 days prior to the beginning of the normal planting season, as determined by the State committee, for the county in which the farm is located. If the reduction cannot be made effective with respect to the current year crop, such reduction shall be made with respect to the farm allotment subsequently established for the farm. This section shall not apply if the farm allotment for any prior year was reduced on account of the same violation.

(d) The amount of reduction in the current year farm allotment shall be that percentage which the amount of peanuts involved in the violation is of the respective farm marketing quota for the farm for the marketing year in which the violation occurred. Where the amount of such peanuts involved in the violation equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent. The amount of peanuts determined by the county committee to have been falsely identified or for which satisfactory proof of disposition has not been furnished shall be considered the amount of peanuts involved in the violation. If the actual production of peanuts on the farm is not known, the county committee shall estimate such actual production, taking into consideration the condition of the peanut crop during the growing and harvesting seasons, if known, and the actual yield per acre of peanuts on other farms in the locality on which the soil and other physical factors affecting the production of peanuts are similar: *Provided*, That the estimate of such actual production of peanuts on the farm shall not exceed the harvested acreage of peanuts on the farm multiplied by the average actual yield per acre on farms on which the soil and other physical factors affecting the production of peanuts are similar. The actual yield per acre of peanuts on the farm, as so estimated by the county committee, multiplied by the smaller of the effective farm allotment or the final acreage shall be considered the farm marketing quota for the purposes of this section. In determining, for farms on which the final acreage exceeds the effective farm allotment, the amount of peanuts for which satisfactory proof of disposition is not shown, the amount of peanuts involved in the violation shall be deemed to be the actual production of peanuts on the farm, estimated as above, less the amount of peanuts for which satisfactory proof of disposition has been shown. For farms on which the final acreage does not exceed the effective farm allotment, the amount of peanuts involved in the violation shall be the quantity of peanuts reported by the farm operator as produced on the farm less the actual production on the farm as determined by the county committee.

(e) If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be computed on the portion of the allotment derived from the farm involved in the violation.

(f) If the farm involved in the violation has been divided prior to the reduction, the percentage of reduction for the allotments for the divided farms shall be the same as though no division had been made.

(g) Any reduction in the allotment for a farm made under this section shall not operate to reduce the allotment for such farm for any subsequent year.

§ 729.1024 *Release and reapportionment*—(a) *Release of acreage allotments.* Any part of the acreage allotted for the current year to an individual farm in any county under the provisions of §§ 729.1018 and 729.1021 on which peanuts will not be produced and which the operator of the farm voluntarily surrenders in writing to the county commit-

tee by a closing date established by the State committee, which shall not be earlier than March 1 or later than July 1 of the current year, shall be deducted from the allotment to such farm. If any part of the farm allotment is permanently released (i. e., for the current year and all subsequent years), such release shall be in writing and signed by both the owner and the operator of the farm. If the entire current year farm allotment is permanently released, the farm shall not thereafter during the current year be eligible for a farm allotment as either an old farm or as a new farm, and the farm peanut history acreages and farm allotments for the current year and prior years shall not be considered in establishing an allotment for the farm for any subsequent year.

(b) *Reapportionment of released acreage allotment.* The farm allotments released under paragraph (a) of this section may be reapportioned by the county committee, to other farms in the same county receiving allotments, in amounts determined by the county committee to be fair and reasonable on the basis of tillable acreage available; labor and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts. Such reapportionment shall be made on the basis of applications filed on Form MQ–30 by farm owners or operators with the county committee not later than a closing date established by the State committee, which shall not be earlier than March 1 or later than July 15 of the current year.

(c) *Maximum acreage allotment.* No allotment shall be increased by reason of the provisions in paragraph (b) of this section to an acreage in excess of the tillable acreage available for the farm.

(d) *Credit for acreage allotment released for the current year only.* The release for the current year only of any part of the acreage allotted to individual farms pursuant to paragraph (a) of this section shall not operate to reduce the allotment for any subsequent year for the farm from which such acreage was released unless the farm becomes ineligible for an old farm allotment. Any increase in the allotment for a farm because of reapportionment under paragraph (b) of this section shall not operate to increase the allotment for any subsequent year for the farm.

§ 729.1025 *Reallocation of allotments released from farms removed from agricultural production.* The allotment determined for any land from which the owner is displaced because of acquisition of the land by any Federal, State, or other agency having the right of eminent domain shall be maintained and reallocated pursuant to the regulations contained in § 719.12 of this chapter.

§ 729.1026 *Additional acreage allotment for farms producing types of peanuts in short supply.* (a) The additional acreage allotment apportioned to any State producing peanuts of a type or types determined to be in short supply for the current year, less a reserve for the correction of errors, shall be apportioned among farms on which peanuts of such type or types were produced in any of the three years of the base period. For each farm eligible to share in the additional acreage apportioned to the State, county committees shall determine that part of the total farm peanut history acreages for the base period that was devoted to or considered as devoted to, the type of peanuts determined to be in short supply. A State total, of such acreages shall be obtained and a factor computed by dividing such State total into the additional acreage apportioned to the State (minus the reserve for the correction of errors). Such factor shall be computed to four places beyond the decimal. The amount of the increase for each farm shall be computed by multiplying the factor by the total acreage determined for each eligible farm. In making this computation the rule of fractions in § 729.1012 (a) shall be followed. The reserve for the correction of errors shall be determined by the State committee on the basis of experience in past allotment programs and its knowledge as to the reliability of data used in apportioning the additional acreage to farms, and shall not exceed three-fourths of one percent of the additional acreage apportioned to the State.

(b) The increase in acreage allotment under this section shall not be considered in establishing future State, county, or farm acreage allotments.

§ 729.1027 *Approval of determinations and notice of farm allotment.* The State committee shall review farm allotments and normal yields and may correct or require correction of any determination made in connection therewith. Such review may be performed on the basis of summaries of farm data transmitted to the State office or by a representative of the State committee inspecting appropriate records in the county offices. Farm allotments shall be approved by the county committee and official notice of the farm allotment on Form MQ–24–1 or MQ–24–2 shall not be issued for a farm until such allotment has been so approved. After approval of farm allotments by county committees a Form MQ–24–1 or MQ–24–2, Notice of Farm Acreage Allotment and Marketing Quota, shall be prepared and mailed to the operator of each farm for which a farm allotment is established. No. Form MQ–24–1 or MQ–24–2 shall be valid unless the signature of a member of the county committee, either actual or facsimile, is entered in the space provided on the form. Forms MQ–24–1 or MQ–24–2 that are prepared for farms for which the farm allotments are reduced in accordance with § 729.1023 shall be mailed to operators by certified mail.

§ 729.1028 *Application for review.* Any producer who is dissatisfied with the farm allotment or marketing quota established for his farm, may within fifteen days after mailing of the official notice, file application under the applicable regulations (Part 711 of this chapter) to have such allotment or quota reviewed.

§ 729.1029 *Right to appeal normal yield determination.* Any producer who is dissatisfied with the normal yield established for his farm may file an appeal for reconsideration of the determination. The request for appeal and facts constituting a basis for such consideration must be submitted in writing and postmarked or delivered to the county committee within fifteen days after the date of mailing the notice of farm normal yield. If the applicant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within fifteen days after the date of mailing of the notice of the decision of the county committee. If the applicant is dissatisfied with the decision of the State committee, he may, within fifteen days after the date of mailing of the notice of the decision of the State committee, appeal to the Deputy Administrator whose decision shall be final.

IDENTIFICATION AND MEASUREMENT OF FARMS

§ 729.1039 *Identification of farms.* Each farm as operated for the current year shall be identified by a farm serial number and all records pertaining to farm allotment and marketing quotas for the current year crop of peanuts shall be identified by the farm serial number.

§ 729.1040 *Measurement of farms.* The peanut acreage on farms shall be measured to determine compliance with farm allotments in accordance with regulations in Part 718 of this chapter.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 729.1041 *Amount of farm marketing quota.* (a) The farm marketing quota for a farm having no excess acreage shall be the actual production of peanuts on the final acreage.

(b) The farm marketing quota for a farm having excess acreage shall be a quantity of peanuts equal to the actual yield per acre multiplied by the effective farm allotment.

§ 729.1042 *Marketing quotas not transferable.* Farm marketing quotas are not transferable in whole or in part from one farm to another farm and peanuts produced on one farm shall not be marketed on a marketing card issued with respect to another farm. If any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm the allotment subsequently established for each such farm shall be reduced as provided in § 729.1023.

§ 729.1043 *Issuance of marketing cards.* (a) A marketing card shall be issued to the operator of each farm on which peanuts are produced in the current year for use by any producer for marketing his share of the peanuts produced on the farm, unless the county office manager finds that all of the peanuts produced on the farm will be sold to persons who are not engaged in the business of buying peanuts for movement into regular channels as described in the proviso in § 729.1049 (a). If the county office manager finds that it will

serve a useful purpose, additional marketing cards may be issued in the name of the operator and delivered to other producers on the farm or the marketing card may be issued in the name of the operator and one or more producers on the farm.

(b) If the county committee determines that such action is necessary to enforce the provisions of the regulations in this part, the issuance of a marketing card may be withheld for any farm until the committee provides for an estimate to be made of the peanut production on such farm. The estimated production on each such farm will be used in determining, after all peanuts produced on such farms have been marketed or otherwise disposed of, whether the marketing card issued for each farm was properly used.

(c) Upon return to the ASC county office, of any marketing card where all spaces for recording sales have been used and before the marketing of peanuts from the farm has been completed, a new marketing card of the same kind, bearing the same name, information, and identification as the used card shall be issued. A new marketing card of the same kind shall also be issued to replace a card which has been determined by the county office manager to have been lost, stolen, mutilated, or destroyed.

(d) Within quota card: A farm is eligible for a within quota card under any one of the following conditions:

(1) The farm has no excess acreage;

(2) The acreage planted to peanuts on the arm is in excess of the effective farm allotment but an agreement on Form MQ-92—Peanuts is executed and approved in accordance with § 729.1054.

(e) Excess penalty card: An excess penalty card shall be issued for a farm if the final acreage exceeds the effective farm allotment and the farm is not eligible for a within quota card under paragraph (d) of this section.

(f) Indebted to U. S.: If any producer on a farm is indebted to the United States and such indebtedness is listed on the county debt record, any marketing card issued for such farm shall bear the notation "Indebted to U. S." on the inside front cover thereof. On the inside back cover of the card the amount and type of the indebtedness, the name of the debtor, and any other data considered necessary to facilitate proper handling of the debt shall be entered. A notation showing "PMQ" (Peanut marketing quota) as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty (including accrued interest) is paid, a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to marketing quotas in which the person liable for payment of the penalty has an interest shall be in effect in favor of the United States. A notation showing indebtedness of any type other than "PMQ" shall constitute notice to any peanut buyer that, subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor shall be paid by check drawn to the order of "Treasurer of the United States" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

§ 729.1044 *Person authorized to issue cards.* The county office manager shall be responsible for the issuance of marketing cards for farms in the county. Each marketing card shall bear the actual or facsimile signature of the county office manager who issues the card. The facsimile signature may be affixed by an employee of the ASC county office.

§ 729.1045 *Successors-in-interest.* Any person who succeeds in whole or in part to the share of a producer in the peanuts to be marketed from a farm shall to the extent of such succession, have the same rights as the producer to the use of any marketing card issued for the farm.

§ 729.1046 *Invalid marketing cards.* (a) A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;

(2) Entries are omitted, incorrect, contradictory, or illegible;

(3) It is lost, destroyed, or stolen;

(4) Any erasure or alteration has been made and not properly initialed; or

(5) The converted penalty rate on an excess penalty card has been altered.

(b) If any marketing card becomes invalid (other than by loss, destruction or theft) the operator, or the person having the card in his possession, shall return it to the ASC county office from which it was issued. If any marketing card is lost, destroyed, or stolen, the producer to whom the card was issued shall give immediate written notice of such fact to the ASC county office from which the card was issued.

(c) If a marketing card is invalid because an entry is not made as required either through omission or incorrect entry, (except incorrect entry of converted penalty rate) and the proper entry is later made or corrected and initialed by an employee of the county committee then such card shall be valid; or if the invalid card is not made valid in this manner, it shall be cancelled and a new card issued in its place.

§ 729.1047 *Report of misuse of marketing card.* Any information which causes a member of a State, county, or community committee, or an employee of an ASC State or county office or any person engaged in buying or handling peanuts, to believe that a marketing card is being misused in any manner shall be reported immediately by such committeeman, employee, or person to the ASC county office or the ASC State office.

MARKETING OR OTHER DISPOSITION OF PEANUTS AND PENALTIES

§ 729.1048 *Extent to which marketings from a farm are subject to penalty.* The penalty for a farm having excess acreage shall be determined as follows:

(a) If the peanuts produced on the farm are properly marketed with an excess penalty card issued for the farm, the penalty shall be paid on each lot of peanuts marketed from the farm in an amount determined by multiplying the converted penalty rate for the farm by the number of pounds in the lot.

(b) If the peanuts produced on the farm are not properly marketed with an excess penalty card issued for the farm but the disposition of the peanuts produced on the farm is accounted for to the satisfaction of the State committee, the total amount of penalty for the farm shall be determined by multiplying the total quantity of peanuts marketed from the farm by the converted penalty rate for the farm.

(c) If the disposition of peanuts produced on the farm is not accounted for to the satisfaction of the State committee or if any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm, a penalty for the farm shall be determined by multiplying the normal yield by the excess acreage by the basic penalty rate.

(d) If a representative of the county committee is prevented by the operator or other producer or person from determining the final acreage, the farm will be deemed to have excess acreage and the penalty for the farm shall be determined by multiplying the quantity of peanuts marketed from the farm by the basic penalty rate. If, however, the operator furnishes a complete and correct report containing the information specified in § 729.1056 (c), the penalty for the farm shall be determined in accordance with paragraph (b) of this section. The procedure outlined in this section shall not be deemed to affect the right of the Secretary to obtain a measurement as provided for in the Act.

(e) Peanuts grown for experimental purposes: No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experimental station and produced at public expense by employees of the experiment station, or peanuts produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station: *Provided*, The director of the publicly-owned agricultural experiment station furnishes the State administrative officer a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(1) Name and address of the publicly owned experiment station;

(2) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only;

(3) The acreage of peanuts grown on each farm for experimental purposes only; and

(4) A signed certification stating that such acreage of peanuts was grown on each farm for experimental purposes only and was necessary for carrying out the experiment; and the peanuts were produced under the direction of representatives of the publicly owned agricultural experiment station.

(f) Notwithstanding the foregoing provisions of this section, the penalty will not be applicable to the shriveled, damaged, split, and broken peanut kernals which are obtained in the process of shelling farmers stock peanuts for use by the producer as seed in the following year, if the quantity of peanuts shelled by or for the producer is not in excess of the seed requirements for his farm as determined by the county office manager.

§ 729.1049 *Identification of marketings.* (a) Each marketing of peanuts from a farm shall be recorded by the buyer or his representative on a marketing card issued for the farm on which the peanuts were produced, if such marketing card is presented to the buyer by the producer at the time the peanuts are marketed. Except to the extent provided in § 729.1052 (a) (1) for marketings of shriveled, damaged, split, or broken kernels, each marketing of peanuts without a marketing card shall be subject to a penalty at the basic penalty rate (see § 729.1050 (a)): *Provided, however,* That a person who is not engaged in the business of buying peanuts for movement into the regular channels of trade shall not be required to make a record and report of purchases of peanuts from producers if the county office manager has determined that it would be administratively impracticable to require such buyer to execute forms, keep the records and make the buyer's reports as required by these regulations, in which case the producer marketing the peanuts shall be responsible for reporting each marketing to the ASC county office.

(b) A buyer who resells any farmers stock peanuts shall keep, as part of or in addition to the records maintained by him in the conduct of his business, such records as will enable him to certify, in connection with any such resale of farmers stock peanuts, that such peanuts were identified to him by valid marketing cards when purchased from farmers and that any penalty due was collected and remitted. The records maintained by the buyer with respect to such peanuts shall be available for examination in accordance with § 729.1061.

§ 729.1050 *Rate of penalty.* (a) The basic penalty rate shall be equal to 75 percent of the support price for peanuts for the marketing year.

NOTE: The exact amount of the penalty rate for each crop of peanuts will be issued as an annual amendment to this section when the basic rate of the loan or support price is announced.

(b) The converted penalty rate for a farm shall be determined as follows:

(1) Compute the percent excess for a farm by dividing the final acreage into the excess acreage.

(2) Multiply the percent excess for the farm by the basic penalty rate.

§ 729.1051 *Persons to pay penalty.* (a) The penalty due on peanuts purchased directly from a producer shall be paid by the buyer who may deduct an amount equivalent to the penalty from the price paid to the producer except that the penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer. The buyer shall not be relieved of any liability with respect to the amount of penalty because of any error which may occur in executing a sales memorandum. If the buyer fails to collect or to pay the penalty due on any marketing of peanuts from a farm, he and all producers on the farm shall be jointly and severally liable for the amount of the penalty.

(b) Notwithstanding any other provisions of §§ 729.1039 through 729.1064, if the county office manager finds that peanuts produced on a farm on which there is excess acreage have been or probably will be sold to persons who are not engaged in the business of buying peanuts for movement into the regular channels of trade and determines that it would be administratively impracticable to effect the collection of the marketing penalty from such persons, the county office manager, may on the basis of county office records or other available information, estimate the actual yield and the production for the farm and determine the amount of penalty due on the quantity of peanuts marketed to such persons. The amount of penalty shall be determined by multiplying the converted penalty rate by the estimated total production for the farm. The amount of penalty may be collected from the operator or producer before he markets his peanuts if he agrees to payment of the penalty in this manner. If the county office manager determines that satisfactory information is not available for estimating the yield for the current crop, a normal yield for the farm shall be determined and it shall be considered to be the estimated actual yield for the purpose of determining the amount of penalty. If the entire amount of the estimated penalty is paid before any peanuts are marketed and an excess penalty card is issued for the farm, the penalty rate on the card shall be shown as "zero". If the county committee determines, after marketing of the crop for the farm has been completed that the actual production for the farm was less than the estimated production, any penalty paid in excess of the amount actually due shall be refunded upon presentation of a request therefor as provided in § 729.1055. If the county committee determines, after marketing of the crop for the farm has been completed that the actual production for the farm was more than the estimated production, the county committee shall immediately redetermine the amount of penalty due and shall make demand upon the producer for the amount of unpaid penalties and the producer shall be liable therefor.

§ 729.1052 *Marketings subject to penalty.* In addition to marketings subject to penalty that are identified by excess penalty cards, the marketing of peanuts under any of the following conditions shall be deemed to be a marketing subject to penalty at the rate prescribed in § 729.1050.

(a) *Producer marketings.* (1) Any marketing of peanuts by a producer which is not identified by a valid marketing card shall be deemed to be a marketing subject to penalty at the rate prescribed in § 729.1050 (a) unless the peanuts marketed consist of shriveled, damaged, split, and broken peanut kernels as described in § 729.1049 (a) or unless the marketing is within the term of the proviso contained in § 729.1049 (a). The penalty due under the provisions of this paragraph shall be determined by multiplying the pounds marketed by the basic penalty rate, and such amount of penalty shall be paid by the buyer who may deduct an amount equivalent to the penalty from the amount due the producer.

(2) Notwithstanding the provisions of § 729.1048, if any producer falsely identifies or fails to account for the disposition of any peanuts produced on a farm, an amount of peanuts equal to the normal yield of the excess acreage for the farm shall be deemed to have been marketed subject to penalty. A penalty for the farm shall be determined by multiplying the normal yield by the excess acreage by the basic penalty rate, and such amount of penalty shall be paid by the producer.

(3) Peanuts produced on excess farms and retained for seed or other purposes will be considered as marketed and therefore subject to the marketing quota penalty if such peanuts are used for seed or other purposes on another farm, *unless* the operator of the excess farm proves to the satisfaction of the county committee that the person(s) producing the peanuts that are used on another farm is the same person(s) and has an identical interest in the crop that will be produced from the seed. In such cases, the burden of proof of identical interest rests with the operator of the excess farm.

(b) *Buyer's marketings.* The part or all of any marketing of peanuts by a buyer which such buyer represents to be a resale, but which when added to prior sales by such buyer is in excess of the total amount of his prior purchases shall be deemed to have been marketed subject to penalty at the basic rate unless and until such buyer furnishes proof acceptable to the State committee showing that such marketing is not a marketing subject to penalty. Any penalty due under this paragraph shall be paid by the buyer making the resale.

(c) *Marketings not reported.* Any marketing of peanuts, which, under §§ 729.1039 through 729.1064, a buyer is required to report, but which is not so reported within the time and in the manner herein required, shall be deemed to be a marketing subject to penalty unless and until such buyer furnishes a report of such marketing which is acceptable to the State committee. The penalty shall be determined by multiplying the pounds marketed by the basic penalty rate and such amount of penalty shall be paid by the buyer who fails to make the report as required.

§ 729.1053 *Payment of penalty.* (a) A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, or interest thereon, but any such draft or check shall be received subject to collection and payment at par. With re-

spect to penalties which were due and unpaid on May 26, 1956, the person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of six percent per annum from such date until paid; with respect to other penalties the person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of six percent per annum from the date the penalty becomes due until the date of payment of such penalty. For purposes of this section such other penalties become due as follows:

(1) Within two calendar weeks following the week in which peanuts are marketed subject to penalty. If the buyer of such peanuts does not remit the penalty within this period interest shall begin to accrue on Monday of the third calendar week following the week in which the peanuts were marketed; or, as to any other case;

(2) Two weeks from the date of written notice to the producer, or buyer of the amount of any penalty owed including but not limited to (i) penalties resulting from violation of a Form MQ-92, Agreement, and (ii) penalties determined on the basis of normal yield (cases involving failure to account for disposition or false identification of peanuts).

(b) Until any penalty is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crop of peanuts subject to marketing quotas in which the person liable for payment of the penalty has an interest shall be in effect in favor of the United States. Such lien takes precedence over any other lien against the crop.

§ 729.1054 *Use of agreement to permit marketings from overplanted farms*—(a) *Within quota card issued on basis of agreement.* If the State committee determines that the agreement provided for in this section will serve a useful purpose, it may authorize its use in the State. Where the use of the agreement is authorized, the county office manager may, upon request of the operator of any farm on which the acreage planted to peanuts exceeds the effective farm allotment, issue a within quota card with respect to the farm in the manner prescribed in § 729.1043 if the operator executes an agreement form in which he represents that the final acreage will not exceed the effective farm allotment and such form is approved by the county committee.

(b) *Form of agreement.* The agreement referred to in this section shall be on Form MQ-92-Peanuts. If the county committee has reason to believe that a within quota card issued pursuant to this section would be used as a device to evade the payment of penalty or the terms and conditions of the price support program, the agreement shall not be approved by the county committee and a marketing card shall not be issued for the farm until the final acreage has been determined.

(c) *Payment of penalty.* If any penalty becomes due for a farm for which an agreement has been executed and approved, the amount of the penalty shall be determined in accordance with § 729.1050. At the request of the county office manager, the operator shall surrender the marketing card issued for the farm showing thereon the required record of all peanuts marketed. After collecting the amount of any penalty due, an excess penalty card shall be issued for the farm if marketings from the farm have not been completed.

§ 729.1055 *Request for refund of penalty.* After the marketing of peanuts from the farm has been completed and the disposition of all peanuts produced on the farm can be shown, the producer or any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 729.1039 through 729.-1064. Such request shall be filed with the ASC county office within two years after the payment of the penalty. No refund shall be made solely because of peanuts kept on the farm for seed or for home consumption. The county office manager shall review each case where the minimum converted penalty rate (one-tenth of a cent) was used on an excess penalty card or was used to compute penalty due because of violation of agreement, to determine those cases where the computed converted penalty rate was less than one-tenth of a cent but was rounded upward because of the rule of fractions. For such cases the county office manager shall recompute the amount of penalty for the farm by multiplying the total pounds of peanuts marketed from the farm by the percent excess by the basic penalty rate. If the penalty for the farm has already been collected and such amount exceeds the revised amount of penalty computed for the farm by more than $3.00, a refund shall be made to the producer in accordance with this section.

RECORDS AND REPORTS

§ 729.1056 *Producer's records and reports*—(a) *Report on marketing card.* Each marketing card issued with respect to a farm on which peanuts are produced shall be returned to the ASC county office as soon as marketings from the farm are completed or at such earlier time as the county office manager may request. Failure to return the marketing card shall constitute failure to account for disposition of peanuts marketed from the farm in the event that an account, satisfactory to the county committee, of such disposition is not furnished otherwise, and the allotment subsequently established for such farm shall be reduced as provided in § 729.1023.

(b) *Report of marketing green peanuts.* (1) The operator of each farm from which green peanuts are marketed shall, within 15 days after the marketing of green peanuts is generally complete in the county, and at such other date(s) as may be requested by the county office manager, file with the county committee a written report containing a record of the peanuts marketed from the farm before drying or removal of moisture by natural or artificial means for consumption exclusively as boiled peanuts. Such written report shall show for the farm:

(i) The number of acres on the farm planted to peanuts;

(ii) The acreage on the farm from which peanuts were marketed as green peanuts;

(iii) The name and address of the buyer to or through whom each lot of green peanuts was marketed, the type and quantity in each lot marketed and the date marketed: *Provided,* That where green peanuts are marketed by the producer in small lots direct to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the name and address of each buyer need not be shown but in lieu thereof the place of marketing shall be shown.

(2) Failure to file any report of the marketing of green peanuts as required by this subsection, or the filing of a report which the county committee finds to be incomplete or inaccurate, shall constitute failure to account for the disposition of the peanuts produced on the acreage involved and such acreage shall not be deducted in determining the final acreage for the farm.

(c) *Additional reports by producers.* (1) In addition to any other reports which may be required under §§ 729.1039 through 729.1064 the operator of each farm or any other producer on the farm (even though the farm has no excess acreage) shall, upon written request from the State administrative officer sent by certified mail to such person at his last known address, furnish the Secretary a written report of the disposition made of all peanuts produced on the farm by sending the same to the ASC State office within 15 days after the request for such report was deposited in the United States mails. Such written report shall show for the farm:

(i) The final acreage as defined in § 729.1011 (k);

(ii) The total production of peanuts;

(iii) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds marketed in each lot, and the date marketed: *Provided,* That where peanuts are marketed in small lots to numerous persons who are not established commercial buyers of peanuts, the report may be made as either a daily or weekly summary of the number of pounds marketed and the name and address of the buyer(s) need not be shown but in lieu thereof the place of marketing shall be shown;

(iv) The quantity and disposition of harvested peanuts not marketed; and

(v) In the case of a farm for which an agreement was approved under § 729.1054, the price per pound or the gross value received for each lot of peanuts.

(2) Failure to file the report as requested or the filing of a report which is found by the State committee to be incomplete or inaccurate shall constitute failure of the producer to account for disposition of peanuts produced on the farm and the allotment next established for such farm shall be reduced as provided in § 729.1023.

§ 729.1057 *Records and reports of buyers and others.* The following paragraphs shall apply to all marketings of peanuts except marketings within the terms of the proviso contained in § 729.1049 (a).

(a) *Record of marketings.* (1) Each buyer shall keep such records as will enable him to furnish the ASC State office the following information with respect to each lot of peanuts marketed to or through him by a producer:

(i) Serial number of the marketing card presented by the producer to identify each marketing;

(ii) Name of the seller;

(iii) Date of marketing;

(iv) Number of pounds marketed;

(v) Type of peanuts purchased;

(vi) Amount of any penalty due and the amount of any deduction for penalty from the amount paid the producer.

(2) This record may be kept by the buyer maintaining a file on his copies of sales memoranda.

(3) Records of all resales of farmers stock peanuts by the buyer shall be maintained and the name of each person to whom such resale was made shall be shown on the buyer's record in accordance with § 729.1049 (b).

(b) *Recording and reporting purchases of farmers stock peanuts.* Buyers will record and report each purchase of farmers stock peanuts from producers on a sales memorandum as follows:

(1) Form MQ–94—Peanuts, may be used by buyers to record purchases of farmers stock peanuts which have been inspected by the Inspection Service. Buyers are not required to send a copy of MQ–94 to the ASC State office or to the Inspection Service.

(2) Form MQ–93—Peanuts (i) may be used by buyers to record and report purchases of farmers stock peanuts which are not inspected by the Inspection Service, (ii) shall be used to record and report purchases of farmers stock peanuts which are not identified by valid marketing cards, and (iii) shall be used when peanuts are identified by a Form MQ–93—Peanuts pursuant to § 729.1058 (b) (1).

(3) Excess Penalty Memorandum, which is attached to Form MQ–77—Peanuts, shall be used to report to the ASC State office data with respect to the purchase of excess peanuts which are identified by Form MQ–77—Peanuts, Peanut Excess Penalty Marketing Card. Such memoranda, along with a remittance covering the penalty due on purchases of excess peanuts, shall be forwarded to the ASC State office by means of Form MQ–79—Peanuts, Buyers Weekly Report and Transmittal to State ASC Office, not later than the end of the second week following the week in which the peanuts were marketed.

(4) Buyers own form, may be used to record or to report data with respect to the purchase of any peanuts (except peanuts identified by Form MQ–77—Peanuts or peanuts which are not identified by a valid marketing card) provided such form is serially numbered and is executed to show required data.

(5) The original of each Form MQ–93—Peanuts or a copy of the buyers own form executed in connection with the purchase of peanuts which are not inspected by the inspection service shall be transmitted to the Inspection Service. This may be done by delivering the forms direct to an Inspection Service employee at the buying point or by mailing the forms daily to the Inspection Service Office serving the State in which the buyers business is located. Such offices are listed below:

State and City

Alabama: Federal-State Inspection Service, Post Office Box 1368, Dothan, Alabama.

Florida and Georgia: Federal-State Inspection Service, Post Office Box 851, Albany, Georgia.

Arizona, California, New Mexico, Louisiana, Mississippi, and Texas: Federal-State Inspection Service, Post Office Box 111, Harlingen, Texas.

Oklahoma, Arkansas and Missouri: Mr. Chester Dotson, 122 State Capitol Building, Oklahoma City 5, Oklahoma.

South Carolina: Mr. C. R. Langford, Post Office Box 9504, Columbia 1, South Carolina.

North Carolina: Federal-State Inspection Service, Post Office Box 709, Williamston, North Carolina.

Tennessee: Federal-State Inspection Service, 406 State Office Building, Nashville 3, Tennessee.

Virginia: Federal-State Inspection Service, Post Office Box 691, Suffolk, Virginia.

If the peanut buyers business is located in a State not listed above Forms MQ–93—Peanuts or copies of the buyers own form shall be submitted to the Deputy Administrator, Production Adjustment, Commodity Stabilization Service, U. S. Department of Agriculture, Washington 25, D. C.

(6) A copy of each MQ–93—Peanuts executed for purchases of peanuts which are not identified by valid marketing cards shall be transmitted to the ASC State office along with excess penalty memoranda and remittances for penalty as provided in subparagraph (3) of this paragraph. The original of each MQ–93—Peanuts executed for peanuts purchased pursuant to § 729.1058 (b) (1) shall be transmitted to the ASC State office pursuant to § 729.1058.

(c) *Recording and reporting purchases of shelled peanuts.* Buyers will record and report each purchase of shelled peanuts from producers (excluding the purchase of shelled peanuts from producers by seed shellers pursuant to § 729.1058 (b)) and collect and transmit penalty in the same manner as purchases of farmers stock peanuts from producers are recorded and reported. The pounds of shelled peanuts purchased shall be converted to the weight of farmers stock peanuts by multiplying the number of pounds of shelled peanuts purchased by 1.5. The result shall be the number of pounds of peanuts considered as marketed.

(d) *Additional records and reports.* Each buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine shall keep such records and furnish such reports to the ASC State office in addition to the foregoing, as the State committee may find necessary and require to insure the proper identification of the marketings of peanuts and the collection of penalties due thereon.

§ 729.1058 *Record and report of and penalty on peanuts shelled for producers*—(a) *Record of shelling.* Any person who shells peanuts for a producer shall maintain records of the shelling of each lot of peanuts showing the following:

(1) The date the peanuts were shelled;

(2) The name and address of the producer for whom the peanuts were shelled;

(3) The name of the State and county wherein is located the farm on which the peanuts were produced;

(4) The quantity of peanuts, farmers stock basis, shelled for the producer; and,

(5) If any quantity of shelled peanuts are retained by the sheller, the quantity of shelled peanuts retained and the quantity returned to the producer. The records mantained by the sheller with respect to such peanuts shall be available for examination in accordance with § 729.1061.

(b) *Shelling peanuts for producers for seed purposes.* Each county committee shall prepare each marketing year a list showing the names and addresses of producers in the county who share in peanuts produced on a farm in the county on which the final acreage exceeded the effective farm allotment. From the lists prepared by county committees the State committee shall prepare a consolidated list and copies of this list, signed by the State administrative officer, shall be available to all persons who shell farmers stock peanuts for producers and in addition, the State administrative officer shall mail a copy of said list signed by him to each known seed sheller. Until a seed sheller receives or obtains a signed copy of the consolidated list from the ASC State office he shall report each purchase of shelled peanuts (including the shriveled, damaged, split and broken peanut kernels produced in shelling peanuts for producers which he retained) and collect and transmit penalty to the ASC State office in the same manner as purchases of farmers stock peanuts are recorded and reported. After receipt of the list prescribed above, marketings of shelled peanuts to seed shellers by producers whose names are not included on the list need not be identified by the producer. In such case the seed sheller is not required to report such marketings to either the ASC State office or the Inspection Service. He is required, however, to maintain the records of shelling as prescribed in paragraph (a) of this section. Each person whose name appears on the list referred to above will be issued a Form MQ–93—Peanuts partially executed by the county office manager to show the quantity of peanuts which is reasonable for seed purposes on the producers farm. The marketing quota penalty is not applicable to the shriveled, damaged, split or broken kernels which result from the shelling of

not more than the quantity of farmers stock peanuts which the county office manager determined is reasonable for seed purposes on the producers farm. In shelling peanuts for persons whose names appear on the list, if the seed sheller retains any of the shelled peanuts, he shall report the transaction and collect penalty as follows:

(1) *Form MQ-93—Peanuts.* If the producer presents a Form MQ-93—Peanuts partially executed by the county office manager as prescribed in this paragraph, the seed sheller shall execute the form by entering in the spaces provided his name and address, the date of shelling, type of peanuts shelled, the pounds of farmers stock peanuts shelled, the pounds of shelled peanuts returned to the producer, the pounds of shelled peanuts retained by the seed sheller and the farmers stock equivalent of the pounds of shelled peanuts retained by the seed sheller. If the quantity of peanuts shelled for the producer exceeds the quantity determined by the county office manager as reasonable for seed purposes on the farm and the seed sheller retains the shriveled, damaged, split and broken peanut kernels which result from shelling the producers peanuts, he shall enter the following additional information on the form: the estimated quantity of kernels that were produced from shelling the pounds of peanuts in excess of the seed requirement for the farm and retained by the sheller, the farmers stock equivalent of such amount, determined by multiplying the pounds of shelled peanuts retained by 1.5, and the amount of penalty to be remitted by the seed sheller determined by multiplying the converted penalty rate for the farm by the "farmers stock equivalent" determined immediately above.

(2) *Excess penalty card.* If the producer presents an excess penalty marketing card the seed sheller shall report the transaction on a Form MQ-93—Peanuts. He shall enter on Form MQ-93—Peanuts the same information as he is required to enter in subparagraph (1) of this paragraph and in addition he shall enter the name and address of the producer, the marketing card number, the converted penalty rate, and the amount of penalty. To determine the pounds of peanuts purchased the seed sheller shall multiply the pounds of shelled peanuts retained by 1.5. The amount of penalty to be remitted by the seed sheller is the result obtained by multiplying the pounds purchased by the converted penalty rate shown on the marketing card.

(3) *No identification.* If the producer does not identify his peanuts with a Form MQ-93—Peanuts or an excess penalty marketing card the seed sheller shall record the transaction on a Form MQ-93—Peanuts by entering the same information on the form as he is required to enter in subparagraph (1) of this paragraph and in addition he shall enter the name and address of the producer, the basic penalty rate, and the amount of penalty to be remitted. The amount of penalty to be remitted by the seed sheller is the result obtained by multiplying the "farmers stock equivalent" of the quantity of peanuts retained by the sheller by the basic penalty rate.

For peanuts shelled in accordance with subparagraphs (1), (2) and (3) of this paragraph the seed sheller shall report each such transaction by sending to the State office for the State in which his place of business is located a copy of each Form MQ-93—Peanuts along with any remittances for penalty. The report shall be made within two weeks after the shelling of peanuts is generally complete in the area, except that the report shall be made periodically throughout the shelling season if this becomes necessary for timely remittance of any penalties. Penalties shall be remitted to the State office within two weeks following the end of the week in which such penalties became due. Penalties become due when the peanuts are marketed.

§ 729.1059 *Separate records and reports from persons engaged in more than one business.* Any person who is required under these regulations to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business shall keep such records as will enable him to make the required reports separately for each such business.

§ 729.1060 *Failure to keep records or make reports.* Any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, who fails to make any report or keep any record as required in accordance with §§ 729.1039 through 729.1064 or who makes any false report or record, is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not more than $500.00.

§ 729.1061 *Examination of records and reports.* Any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or threshing machine, shall make available for examination upon written request by the Director, the State administrative officer, or any agent of the Compliance and Investigation Division, Commodity Stabilization Service, United States Department of Agriculture, such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as the Director, the State administrative officer or such agent has reason to believe are relevant to any matter under investigation in connection with enforcement of the act and regulations issued thereunder and which are within the control of such person.

§ 729.1062 *Length of time records and reports to be kept.* Records required to be kept and copies of reports required to be made by any person in accordance with the regulations in this part shall be kept by him until three years following the end of the marketing year pertaining to such records and reports. Records shall be kept for such longer period of time as may be requested in writing by the Director or State administrative officer.

§ 729.1063 *Information confidential.* All data reported to or as required by the Secretary pursuant to the provisions of §§ 729.1039 through 729.1064 shall be kept confidential by all officers and employees of the United States Department of Agriculture by all employees of the Inspection Service and by all members and employees of State or county committees, and only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the Act.

§ 729.1064 *Redelegation of authority.* Any authority delegated to the State committee by the regulations in this part may be redelegated by the State committee to any member of the State committee, the county committee or any member thereof, or any employee of a State or county committee.

NOTE: The record-keeping and reporting requirements of these regulations have been approved by, and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1952.

Done at Washington, D. C., this 29th day of October 1958. Witness my hand and the seal of the Department of Agriculture.

[SEAL] E. L. PETERSON,
Acting Secretary of Agriculture.

[F. R. Doc. 58-9107; Filed, Oct. 31, 1958; 8:55 a. m.]

PART 730—RICE

SUBPART—1959-60 MARKETING YEAR

PROCLAMATIONS AND DETERMINATIONS WITH RESPECT TO NATIONAL ACREAGE ALLOTMENT FOR 1959 CROP, AND APPORTIONMENT OF 1959 NATIONAL ACREAGE ALLOTMENT AMONG THE SEVERAL STATES

Sec.
730.1001 Basis and purpose.
730.1003 National acreage allotment of rice for 1959.
730.1004 Apportionment of 1959 national acreage allotment of rice among the several States.

AUTHORITY: §§ 730.1001 to 730.1004 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 352, 353, 52 Stat. 38, as amended, 60, as amended, 61, as amended; 7 U. S. C. 1301, 1352, 1353.

§ 730.1001 *Basis and purpose.* (a) (1) Section 730.1003 is issued under and in accordance with sections 352 and 353 of

the Agricultural Adjustment Act of 1938, as amended, to proclaim the national acreage allotment of rice for the calendar year 1959. Section 353 (c) (6) of the act, as amended by section 301 of Public Law 85–835, 72 Stat. 994, provides that the national acreage allotment of rice for 1959 shall be not less than the total acreage allotted in 1956. Section 730.1004 is issued under and in accordance with section 353 of the Agricultural Adjustment Act of 1938, as amended, to apportion among the several States the national acreage allotment of rice for 1959 as proclaimed in § 730.1003 hereof. Section 353 of the act provides that the national acreage allotment of rice for 1959, less a reserve of not to exceed one per centum for apportionment to farms receiving inadequate allotments, shall be apportioned among the States in the same proportion that they shared in the total acreage allotted in 1956.

(2) Public Law 85–443 authorizes the Secretary of Agriculture under certain circumstances to divide any State into two administrative areas to be designated "producer administrative area" and "farm administrative area", and provides that if any State is so divided into administrative areas the term "State acreage allotment" for the purposes of section 353 of the Agricultural Adjustment Act of 1938, as amended, shall be deemed to mean that part of the State acreage allotment apportioned to each administrative area.

(3) Public Law 85–443 also provides that if any State is divided into administrative areas the allotment for each area shall be determined by apportioning the State acreage allotment among counties as provided in section 353 (c) of the Agricultural Adjustment Act of 1938, as amended, and totaling the allotments for the counties in such area. The acreage allotments for the "farm administrative area" and "producer administrative area" in the State of Louisiana which are set out in § 730.1004 were determined by apportioning the State acreage allotment for Louisiana among the counties in the State in the same proportion which each such county shared in the total acreage allotted in the State in 1956, as provided in section 353 (c) (1) of the Agricultural Adjustment Act of 1938, and totaling the allotments for the counties in each such area.

(b) The findings and determinations made in §§ 730.1003 and 730.1004 have been made on the basis of the latest available statistics of the Federal Government. The determinations made in § 730.1003 indicate the amount of the 1959 national acreage allotment of rice.

(c) Prior to taking action herein, public notice (23 F. R. 7431) was given in accordance with the Administrative Procedure Act (5 U. S. C. 1003), that the Secretary was preparing to determine and proclaim the national acreage allotment of rice for 1959, and to apportion among the States the 1959 national acreage allotment of rice. No data, views, or recommendations pertaining thereto were submitted pursuant to such notice.

§ 730.1003 *National acreage allotment of rice for 1959.* The normal supply of rice for the marketing year commencing August 1, 1959, is determined to be 56,726 thousand hundredweights (rough basis). The carry-over of rice on August 1, 1959, is determined to be 12,400 thousand hundredweights. Therefore, the production of rice needed in 1959 to make available a total supply of rice for the 1959–60 marketing year equal to the normal supply for such marketing year is 44,326 thousand hundredweights. The national average yield of rice for the five calendar years, 1954 through 1958 is determined to be 3,001 pounds per planted acre. The national acreage allotment of rice for 1959 computed on the basis of the production of rice needed in 1959 and the national average yield per planted acre of rice for the five calendar years, 1954 through 1958, is 1,477,041 acres. Since this amount is less than the total acreage allotted in 1956, which is the minimum for 1959 provided by law, the national acreage allotment of rice for the calendar year 1959 shall be 1,652,596 acres.

§ 730.1004 *Apportionment of 1959 national acreage allotment of rice among the several States.* The national acreage allotment proclaimed in § 730.1003, less a reserve of 950 acres, is hereby apportioned among the several rice-producing States as follows:

State		Acres
Arizona		229
Arkansas		398,855
California		299,648
Florida		956
Illinois		20
Louisiana:		
Producer Administrative Area	16,944	
Farm Administrative Area	457,877	
State total		474,821
Mississippi		46,656
Missouri		4,765
North Carolina		38
Oklahoma		149
South Carolina		2,845
Tennessee		517
Texas		422,147

Issued at Washington, D. C., this 29th day of October 1958. Witness my hand and the seal of the Department of Agriculture.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 58–9106; Filed, Oct. 31, 1958; 8:55 a. m.]

PART 730—RICE

SUBPART—REGULATIONS FOR THE DETERMINATION OF RICE ACREAGE ALLOTMENTS FOR THE 1959 AND SUBSEQUENT CROPS OF RICE

GENERAL

AUTHORITY: §§ 730.1010 to 730.1035 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 353, 363, 52 Stat. 38, as amended, 61, as amended, 63, as amended, secs. 377, 308, 70 Stat. 206, as amended; 7 U. S. C. 1301, 1353, 1363, 1377, 1442.

GENERAL

§ 730.1010 *Basis and purpose.* (a) The regulations contained in §§ 730.1010 to 730.1035, inclusive, are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of farm acreage allotments for the 1959 and subsequent crops of rice. The purpose of the regulations in this subpart is to provide the procedure for apportioning in the States of California, Florida, North Carolina, Tennessee, Texas, and the "producer administrative area" within the State of Louisiana, the State rice acreage allotments among rice producers in the State or administrative area and, in the States of Arkansas, Illinois, Mississippi, Missouri, Oklahoma, South Carolina, and the "farm administrative area" within the State of Louisiana, the apportionment of county rice acreage allotments among farms in the county. In the latter group of States, including the "farm administrative area" within the State of Louisiana, the respective State committees have recommended that farm acreage allotments be determined on the basis of the past production of rice on farms and the acreage allotments previously established for farms in lieu of the past production

of rice by producers on farms and acreage allotments previously established for the producers, and the Secretary has determined that such action will facilitate effective administration of the act.

(b) In view of the provisions of the act which preclude any acreage planted to rice in excess of the farm acreage allotment being taken into account in establishing State, county, and farm acreage allotments and Public Law 85-266 which requires that, with a minor exception, the entire farm allotment (excluding released and reapportioned acreage) be considered planted to rice in 1957, 1958 and 1959, for the purpose of determining future State, county and farm allotments, the acreage planted or considered planted to rice on any farm in the preceding year is indicative of the past production of rice on the farm, or the producer's shares therein, and of allotments previously established. Accordingly, in producer States other than the "producer administrative area" within the State of Louisiana such acreages, except where limited adjustments are necessary to reflect the statutory factors for the establishment of allotments other than the past production of rice and allotments previously established, will be the base acreages for the current year for producers or farms, as applicable. Individual adjustments, except as provided for in specific cases, shall be limited to 10 percent of the farm or producer rice acreage allotment, as applicable, determined for the producer or the farm for the year immediately preceding the year for which the allotment is being established. In the "producer administrative area" within the State of Louisiana, generally the producer's shares of the acreage planted or considered planted to rice on farms in 1958 will not adequately reflect the statutory factors for the establishment of allotments. Therefore, 1959 base acreages for producers in this area will be determined on the basis of the producer's historical average acreage or adjusted average acreage in lieu of his share of the acreage planted or considered planted to rice on farms in 1958. The regulations in §§ 730.1010 to 730.1035, inclusive, will remain in effect until amended, superseded, or suspended.

(c) Prior to preparing the regulations in this subpart, public notice was given in accordance with the Administrative Procedure Act (5 U. S. C. 1003). The data, views, and recommendations pertaining to the regulations in this subpart which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended. In addition, because of the interest engendered by the enactment of Public Law 85-443, notice was given in FEDERAL REGISTER (23 F. R. 6797) and a public hearing was held in Alexandria, Louisiana, on September 18, 1958. Due consideration has been given to the views expressed at the hearing with respect to the counties which would be included within the "producer administrative area" within the State of Louisiana and to the establishment of base acreages in such area.

(d) The Agricultural Adjustment Act of 1938 requires that, insofar as practicable, notices of acreage allotments be mailed to producers in sufficient time to be received prior to the referendum to be held to determine whether farmers approve or disapprove marketing quotas. Since allotments for the 1959 crop of rice cannot be determined and notices thereof mailed to producers until the regulations in this subpart become effective, it is hereby found and determined that the regulations shall become effective upon the date of their publication in the FEDERAL REGISTER.

§ 730.1011 *Definitions.* As used in the regulations in this subpart and in all instructions, forms and documents in connection therewith, the words and phrases defined in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires. The following words or phrases are defined in Part 719 of this chapter, Reconstitution of Farms, Farm Allotments, and Farm History and Soil Bank Base Acreages (23 F. R. 6731) and shall have the meaning assigned to them by such regulations: county committee, county office manager, community committee, current year, cropland, farm, operator, person, preceding year, producer, Secretary, State administrative officer, and State committee.

(a) "Act" means the Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

(b) "Developed rice land" means cropland on which rice has been produced and for which water and other irrigation facilities are readily available for the production of rice in the current year.

(c) "Old farm" means any farm on which there was rice acreage, including any acreage considered as rice acreage under the provisions of section 106 (a) or 112 (2) of the Soil Bank Act of section 377 of the act, in any one or more of the five years immediately preceding the current year. The acreage of rice in 1958 or any subsequent year on a farm for which no allotment was established shall not be considered "rice acreage" for purposes of this definition.

(d) "New farm" means any farm other than one defined under paragraph (c) of this section and for which an allotment is requested for the production of rice in the current year.

(e) "Old producer" means any person who was engaged in the production of rice on a farm during one or more of the five years immediately preceding the current year: *Provided*, That such person shall not be considered to have been engaged in the production of rice if such producer made no producer allotment contribution to the farm allotment established for the farm.

(f) "New producer" means any producer other than one defined under paragraph (e) of this section who requests an allotment for the production of rice in the current year.

(g) "Engaged in the production of rice" means actively participating as landlord, tenant, or sharecropper in the conduct of the farming operations necessary to produce and harvest a crop of rice on a farm and the sharing in a predetermined and fixed portion of the rice crop, or the proceeds thereof, at the time of harvest by virtue of having contributed in the capacity of landlord, tenant, or sharecropper, the land, labor, water or equipment necessary for the production of the rice crop. Any landowner and any producer, including a tenant, who holds a lease or rental agreement, provided the land under lease or rental agreement meets the definition of developed rice land, who requests the allocation of his producer allotment to a farm for the purpose of diverting an acreage from the production of rice under the conservation reserve program or for 1959 the preservation of his allotment for history purposes, shall be considered to be engaged in the production of rice. Any person who shares in a rice crop by virtue of an assignment of the crop for furnishing equipment, seed, fertilizer, or supplies (other than irrigation water), or as security for cash or credit advanced or for furnishing labor only for a particular phase of production, or any tenant who the county committee finds not to be actively participating in the conduct of the farming operations on a farm to which such tenant has allocated allotment acreage shall not be deemed to be engaged in the production of rice.

(h) "Rice acreage" means the acreage planted to rice and the acreage of volunteer rice which reaches maturity, excluding (1) any acreage of nonirrigated rice of three acres or less, (2) any acreage of sweet, glutenous, or candy rice, commonly known as Mochi Gomi, (3) any acreage of rice grown for experimental purposes only by or under contract to a publicly-owned agricultural experiment station, (4) any acreage of rice in excess of the allotment on a wildlife refuge farm consisting solely of Federal or State-owned land: *Provided*, That such acreage is not harvested, but is left on the land for wildlife feed, (5) any acreage planted to rice in excess of the farm rice acreage allotment, or when applicable, the permitted acreage of rice under an acreage reserve agreement or a conservation reserve contract under the soil bank program, which is destroyed or otherwise handled or treated (by the producer or from some cause beyond his control) not later than the date established by the county committee with the approval of the State committee so that rice cannot be harvested therefrom, and (6) any acreage seeded to rice outside of the field border levee where such levee is bounded by a fence or other barrier which would make it impossible to harvest or destroy the rice from such area by mechanical means, and any acreage seeded to rice inside of drainage ditch banks when the topography would make it impossible to harvest or destroy the rice from such acreage by mechanical means: *Provided*, That the seeding operations have been performed with an end gate seeder or by airplane.

(i) "Farm rice history acreage" means:

(1) For 1954 the "rice acreage" on the farm in 1954 as defined in the 1955 farm rice acreage allotment regulations (20 F. R. 385), and any amendments thereto;

(2) For 1955 the "1955 rice acreage" for the farm, as determined under § 730.716 of the 1956 farm rice acreage allotment regulations (21 F. R. 72), and any amendments thereto, excluding the acreage diverted or considered diverted from the production of rice on such farm;

(3) For 1956 the "rice history acreage" determined for the farm under § 730.816 (a) or § 730.824 (a), as applicable, of the 1957 farm rice acreage allotment regulations (21 F. R. 8423), and any amendments thereto; excluding the acreage determined to have been diverted from the production of rice under such regulations;

(4) For 1957 the "acreage planted or considered planted" to rice, as determined in accordance with § 730.916 (b) or § 730.927 (b), as applicable, of the 1958 farm rice acreage allotment regulations (22 F. R. 8477), and any amendments thereto; and

(5) For 1958 and 1959 the "acreage planted or considered planted" to rice as determined in accordance with § 730.1016 (b) or § 730.1027 (b) of the regulations in this subpart for establishing rice acreage allotments for 1959 and subsequent crops of rice.

(j) "Producer rice history acreage" means the producer's share(s) of the acreages determined for farms under paragraph (i) of this section, including the acreage, if any, released by such producer in accordance with the applicable provisions for the release of acreage in 1955 and thereafter.

(k) "Tenant" means a producer who is engaged in the production of rice on land owned by another, paying rent either in cash or in shares of the rice crop, and also includes an irrigation company which furnishes water for a share of the crop.

(l) "Producer State" means the States of California, Florida, North Carolina, Tennessee, Texas, and the "producer administrative area" within the State of Louisiana consisting of the counties or parishes of Morehouse, Ouachita, Caldwell, La Salle, Catahoula, Concordia, West Feliciana, Pointe Coupee, Iberville, Assumption, and Terrebonne and all counties or parishes within the State east of such counties or parishes, in which farm rice acreage allotments are determined on the basis of past production of rice in the State by the producer on the farm and the rice acreage allotments previously established in the State for the producer.

(m) "Farm State" means the States of Arkansas, Illinois, Mississippi, Missouri, Oklahoma, South Carolina and the "farm administrative area" within the State of Louisiana consisting of the counties or parishes of Union, Lincoln, Jackson, Winn, Grant Rapidees, Avoyelles, Saint Landry, Saint Martin, Iberia and Saint Mary and all counties or parishes within the State west of such counties or parishes, in which farm rice acreage allotments are determined on the basis of past production of rice on the farm and the rice acreage allotments previously established for the farm in lieu of past production of rice by the producer and the acreage allotments previously established for the producer.

(n) "Administrative area" means a group of one or more counties or parishes within a State specifically designated as such for the purpose of establishing rice acreage allotments in the State. In any State in which administrative areas are designated there shall be two such administrative areas, one designated "producer administrative area" in which farm rice acreage allotments shall be established on the basis of past production of rice by producers on the farm and the other designated "farm administrative area" in which farm rice acreage allotment shall be established on the basis of past production of rice on the farm. For purposes of the regulations contained in this subpart in States which have been divided into administrative areas the term "State acreage allotment" shall be deemed to mean the part of the State acreage allotment apportioned to each administrative area and the word "State" shall be deemed to mean "administrative area," where applicable.

§ 730.1012 *Extent of calculations and rule of fractions.* All rice acreage allotments and other computations shall be computed to three places beyond the decimal point and rounded to tenths of acres. Fractions of fifty-one thousandths of an acre or more shall be rounded upward, and fractions of less than fifty-one thousandths of an acre shall be dropped. For example, 39.051 would be 39.1 and 39.050 would be 39.0.

§ 730.1013 *Forms and instructions.* The Director of the Grain Division, Commodity Stabilization Service, shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator for Production Adjustment, Commodity Stabilization Service.

§ 730.1014 *Supervision, review and approval by State committees.* State committees shall have over-all responsibility for the administration of the regulations herein in their respective States. All acreage allotments shall be reviewed by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman and the State committee may revise or require revision of any determination made under the regulations in this subpart. All acreage allotments for rice shall be approved by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman and no official notice thereof shall be mailed until such allotment has been approved by or on behalf of the State committee.

FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE BY PRODUCERS

§ 730.1015 *Report of producer data.* In a producer State, each producer, to the extent that such information is found necessary and is not already available to the county committee, shall furnish the county committee of the county in which such producer is or will be engaged in the production of rice in the current year the names, addresses, and acreage shares of other persons having an interest in each rice crop in which such producer shared during the five years immediately preceding the current year. Information not so furnished shall be determined or appraised by the county committees on the basis of records in the county offices, available production and sales records, and other available information.

§ 730.1016 *Establishment of base acreages for old producers*—(a) *Basic factors.* In a producer State, the past production of rice in the State by the producer on farms and the acreage allotments previously established in the State, or administrative area, where applicable, for such producer; abnormal conditions affecting acreage; land, labor, and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice, are the factors for apportioning the State rice acreage allotment, less appropriate reserves, to farms owned or operated by persons who have produced rice in any one of the five calendar years immediately preceding the year for which the allotment is determined. To reflect these factors, the county committee, with the approval of the State committee shall, except for a person or irrigation company furnishing water for a share of the rice crop, establish a base acreage of rice for the current year for each old producer in the county. Prior to establishing such base acreages in the county, the county committee shall determine for each old farm (1) the acreage planted or considered planted to rice on the farm for the year immediately preceding the year for which the allotment is being established and (2) each producer's share of such acreage determined for such farm.

(b) *Acreage planted or considered planted to rice on any farm in preceding year.* The acreage planted or considered planted to rice on any farm for 1958 and 1959 shall be the farm rice acreage allotment established under applicable regulations for the farm for the year for which the acreage planted or considered planted to rice is being determined, except as provided for in subparagraphs (1) to (6) of this paragraph:

(1) If the farm rice acreage allotment on any farm was underplanted in any year for the purpose of reducing an amount of rice from a prior crop which was previously stored to postpone or avoid payment of a marketing quota penalty, the acreage planted or considered planted to rice on the farm in such year shall be the rice acreage on the farm and the acreage, if any, diverted from the production of rice through participation in the soil bank program under an acreage reserve agreement and/or conservation reserve contract.

(2) The acreage diverted from the production of rice under an acreage reserve agreement on any farm shall be the smallest of (i) the acreage of rice entered on the acreage reserve agreement; (ii) the measured acreage reserve; or (iii) the farm rice acreage allotment minus the acreage actually planted to rice on the farm.

(3) The acreage diverted from the production of rice under a conservation reserve contract on any farm shall be the smallest of (i) the acreage placed in the conservation reserve program at the regular rate; (ii) the reduction in total soil bank base crops; or (iii) the amount by which the farm rice acreage allotment exceeds the sum of the acreage actually planted to rice and the acreage, if any, diverted from the production of rice under the acreage reserve program, except, that if the reduction in the total soil bank base crops on the farm exceeds the farm rice acreage allotment, or if the conservation reserve contract is found to be in violation because of failure to reduce the total soil bank base crops on the farm to the extent required, the producer may elect to utilize the conservation reserve acreage credit heretofore determined for the farm for the purpose of removing excess penalty rice from storage.

(4) If the reduction in total soil bank base crops on the farm exceeds the farm rice acreage allotment, the conservation reserve acreage credit heretofore determined for the farm many be used for removing excess penalty rice from storage to the extent of the amount the reduction in total soil bank crops exceeds the rice acreage allotment.

(5) If the conservation reserve contract is found to be in violation because of failure to reduce the total soil bank base crops on the farm to the extent required all or any part of the conservation reserve acreage credit heretofore determined for the farm may be used for removing excess penalty rice from storage.

(6) Notwithstanding the provisions of this paragraph any acreage that is utilized for the purpose of removing excess penalty rice from storage shall not be considered acreage planted or considered planted to rice for history purposes, and in no event shall the acreage determined to be planted or considered planted to rice on a farm exceed the farm rice acreage allotment determined for such farm.

(c) *Producer's share of the acreage planted, or considered planted to rice on any farm and the acreage, if any, released for reapportionment.* (1) The acreage planted or considered planted to rice as determined under paragraph (b) of this section for any farm for any year shall be divided among the producers who were engaged in the production of rice on the farm in such year in the same proportion that each producer's rice acreage allotment, or part thereof, allocated to such farm for such year bears to the farm rice acreage allotment established for such farm for such year.

(2) Any producer rice acreage allotment voluntarily released by a producer to the county committee for reapportionment to farms under § 730.1024 of the regulations in this subpart shall be added to such producer's share of the acreage planted or considered planted to rice on farms as determined under paragraph (b) of this section. The sum of the acreages determined under this paragraph for any year shall be the producer's share of the acreage planted or considered planted for such year.

(d) *Recommended producer base acreage in a producer State other than the producer administrative area of Louisiana.* (1) If the county committee finds for any old producer in a producer State, except an old producer in the producer administrative area of Louisiana, that such producer's share of the acreage planted or considered planted to rice on farms on which he was a producer in the State in the preceding year, including any acreage released by such producer for reapportionment, adequately reflects the factors referred to in paragraph (a) of this section such acreage shall be the recommended base acreage for the producer for the current year. In making such finding the county committee shall take into consideration the factors referred to in subparagraph (2) of this paragraph.

(2) If the county committee finds for any old producer that such producer's share of the acreage planted or considered planted to rice on farms on which he was a producer in the preceding year, including any acreage released by such producer for reapportionment, does not adequately reflect the factors referred to in paragraph (a) of this section because the acreage planted or considered planted to rice in the preceding year on such farms is substantially above or below the rice acreage planted or considered planted to rice on other farms in the county which are similar with respect to:

(i) The acreage of developed rice land on the farm;

(ii) The number of rice producing tenants or other labor on the farm;

(iii) The equipment available for producing the rice crop;

(iv) The soil, water and other physical factors affecting the production of rice; or

(v) An established crop-rotation system being carried out on the farm;

the producer's share of the acreage planted or considered planted to rice on farms on which he was a producer in the preceding year, including any acreage released by such producer for reapportionment, shall, for the purpose of establishing a recommended base acreage for the current year, be adjusted so as adequately to reflect the factors referred to in paragraph (a) of this section: *Provided*, That in no case, except as provided for in paragraph (f) of this section, shall such adjusted acreage exceed 110 percent or be less than 90 percent of the producer rice acreage allotment established for such producer for the preceding year.

(3) If a definitely established crop-rotation system is being carried out on a farm and the acreage planted or considered planted to rice in the preceding year for the landowner is adjusted for the current year the adjusted acreage shall not exceed the largest or be less than the smallest allotment established for such owner for any year during the three years immediately preceding the current year: *Provided*, That if a zero allotment was established for a landowner in each of such years because of an established crop-rotation system, and rice will be planted on his farm under such system in the current year the adjusted acreage shall not exceed his share of the largest acreage planted or considered planted to rice on the farm during the five years immediately preceding the curent year, or unless rice was planted or considered planted on a farm in each of the three years immediately preceding the current year and it is determined that no rice will be planted on the farm in the current year under such a system an adjusted acreage of zero may be established for such landowner.

(e) *Recommended producer base acreage in the producer administrative area of Louisiana.* (1) In the "producer administrative area" of Louisiana, if the county committee finds for any old producer that the historical average acreage as determined in accordance with subdivision (i) of subparagraph (2) of this paragraph for such producer adequately reflects the factors referred to in paragraph (a) of this section such acreage shall be the recommended base acreage for the producer for the current year. In making such finding the county committee shall take into consideration the factors referred to in subdivision (ii) of subparagraph (2) of this paragraph.

(2) If the county committee finds that the historical average acreage for such producer as determined under subdivision (i) of this subparagraph will not be fair and reasonable in relation to the factors enumerated in subdivision (ii) of this subparagraph when compared with the base acreages established for other producers in the county the adjusted average acreage as determined under subdivision (ii) of this paragraph shall be the recommended base acreage for the producer for the current year.

(i) The historical average acreage shall be the average of the producer's shares of the acreages planted or considered planted to rice on farms in each year during the five years immediately preceding the current year, including any acreage released by the producer in such year for reapportionment.

(ii) The adjusted average acreage shall be obtained by eliminating from the period of years used in determining the historical average acreage any year or years for which the county committee finds that the producer's share of the acreage planted or considered planted to rice on farms on which he was engaged in the production of rice does not adequately reflect the past production of rice by the producer on other farms in the area. In making this determination the county committee shall take into consideration abnormal conditions affecting the producer's acreage; developed rice land; labor; equipment available for producing rice; soil, water and other

physical factors affecting the production of rice, and, where applicable, the crop-rotation system being carried out on the farm on which he was engaged in the production of rice. When one or more of the years are eliminated in accordance with these provisions the average of the years not so eliminated shall be considered as the adjusted average acreage for the producer. If all years in the applicable period are eliminated, the adjusted average acreage shall be zero.

(3) If the base acreage determined under subdivision (i) or (ii) of subparagraph (2) of this paragraph is zero, the county committee shall, except as provided in paragraph (f) of this section, appraise a base acreage for the producer which is fair and reasonable in relation to the base acreages determined for other producers in the county, taking into consideration the land, labor, water and equipment available for the production of rice, crop-rotation practices, and the soil and other physical factors affecting the production of rice.

(f) Notwithstanding the provisions of paragraphs (d) and (e) of this section if the county committee finds that any producer will not be actively engaged in the production of rice in the current year because he does not have readily available the developed rice land or equipment necessary for producing a rice crop, a zero base acreage shall be established for such producer.

§ 730.1017 *Determination of allotments for old producers.* (a) The base acreages of rice determined for producers under § 730.1016 adjusted pro rata to equal the State allotment or "producer administrative area" allotment, where applicable, minus (1) a reserve established by the State committee and approved by the Secretary of not to exceed 3 per centum of the State allotment for new producers, and (2) an appropriate reserve established by the State committee and approved by the Secretary of not to exceed 5 per centum of State allotment or "producer administrative area" allotment, where applicable, for appeals and corrections, missed producers, and adjustments under paragraph (b) of this section, except as may be adjusted under paragraphs (b) and (c) of this section, shall be the rice acreage allotments for old producers. If, as a result of corrections, the total acreage allotted to producers in any State for which corrections are made is less than the total acreage originally alloted to such producers, such difference in acreage shall be added to the State reserve for appeals and corrections provided for in this paragraph without regard to the limitation thereon.

(b) The allotment determined for any old producer under paragraph (a) of this section may be increased if the State committee, with the assistance of the county committee, determines that the allotment is small in relation to allotments established for other old producers in the county on the basis of the crop-rotation practices, the land, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice during the five years immediately preceding the current year: *Provided*, That such increased allotments shall not exceed the allotments determined for other producers in the county which are similarly situated with respect to these factors. The acreage used in any State for increasing producers' allotments under this paragraph shall not exceed the acreage made available therefor under paragraph (a) of this section.

(c) The acreage allotment determined for any producer under paragraph (a) or (b) of this section may be increased if the State committee, with the assistance of the county committee, determines that such allotment for the producer is inadequate becuse of an insufficient State acreage allotment or "producer administrative area" allotment, where applicable, or because rice was not planted by the producer during all of the preceding five years, taking into consideration the producer's investment in equipment and other facilities for the production of rice and the acreage required to make such allotment for the producer an economic unit: *Provided*, That the total of such increases in allotments under this paragraph shall not exceed the acreage, if any, made available to the State from the national reserve provided for by section 353 (a) of the act.

§ 730.1018 *Determination of allotments for new producers.* (a) In a producer State, the State committee, with the assistance of the county committee, shall determine for each eligible new producer a rice acreage allotment and allocate such allotment to the farm or farms in accordance with the provisions of § 730.1021.

(b) Each person desiring a rice acreage allotment as a new producer shall file an application therefor with the county committee on or before the 31st day of January of the current year. Each such application shall contain the following information: The name, address, and age of the applicant; whether arrangements have been made for the land and water necessary to produce a rice crop in the current year; the source from which irrigation water will be obtained; the equipment owned by the applicant or otherwise available to him for producing rice in the current year; whether the applicant is engaged in farming at the time of filing the application; whether the applicant expects to derive 50 percent or more of his livelihood in the current year from farming operations; the applicant's past experience in the production of rice, and the acreage allotment requested by the applicant for the current year.

(c) To be eligible for a rice acreage allotment as a new producer, the applicant must have filed his application for an allotment on or before the date provided herein, and must establish to the satisfaction of the county committee that (1) he has had past rice producing experience; (2) he has previously arranged for the land and water necessary for the production of rice in the current year; (3) he owns or has available for his use adequate equipment for producing rice in the current year; (4) he expects to derive 50 percent or more of his livelihood in the current year from farming operations; and (5) he has not filed his application for the purpose of obtaining a rice acreage allotment as a new producer which would be used, if obtained, as a device to offset a reduction in the rice acreage of an old producer with whom he was formerly, or will be, associated in financing, producing, or marketing rice.

(d) The sum of the acreages allocated to eligible new producers in a State shall not exceed the reserve established by the State committee in accordance with § 730.1017.

§ 730.1019 *Notice of producer allotment.* The allotment as determined under § 730.1017 or § 730.1018, as applicable, for each producer, when approved by or on behalf of the State committee, shall be the official producer rice acreage allotment for such producer. The county committee shall officially notify each producer, at his last known address, of the producer rice acreage allotment established for him. Such notice shall bear the actual or facsimile signature of the county committee. The facsimile signature may be affixed by the county committeeman or by an employee of the county office. Insofar as practicable all producer allotment notices in a county shall be mailed on the same date and in time to be received prior to the date on which the referendum to determine whether farmers favor or oppose rice marketing quotas will be held. A copy of each such notice approved shall be kept freely available in the county office for a period of not less than 30 calendar days. At the end of such period the copies of the notices shall remain readily available for further public inspection.

§ 730.1020 *The right to appeal producer allotment to county and State committees.* Any producer in a producer State, or "producer administrative area", where applicable, who is dissatisfied with his producer rice acreage allotment may, within 15 days after the date of mailing of the notice of such allotment, file an appeal in writing to the county committee for reconsideration of such allotment. If the appellant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal in writing to the State committee within 15 days after the date of mailing the notice of the decision of the county committee. The decision of the State committee shall be final with respect to a producer's appeal of his producer rice acreage allotment. However, when his producer allotment has been allocated to a farm and he has been officially notified of the allotment for the farm on which he will be engaged in the production of rice, he may file an application in accordance with the provisions of § 730.1035 for a review of the farm rice acreage allotment.

§ 730.1021 *Allocation of producer allotments to farms.* (a) Each producer who desires to have a farm rice acreage allotment established for a farm on which he will be engaged in the production of rice in the current year shall file a request with the county committee for allocating his producer allotment as determined under § 730.1017, § 730.1018 or

§ 730.1020, as applicable, to such farm or farms. Each such request shall contain the name (or code number) of the State and county in which the farm is located and the farm serial number, the total acres in the farm, the cropland acres, the developed rice land acres, the name and address of the farm operator and the name and address of the farm owner where different from the farm operator, the name and address of the applicant, the location of the farm, the applicant's producer rice allotment, the rice acreage allotment to be allocated to the farm, the applicant's interest in the rice crop to be produced on the farm by virtue of furnishing the land, labor, water and/or equipment, and the applicant's approximate percentage share of the rice crop to be produced on the farm as the result of furnishing the land, labor, water and/or equipment.

(b) In the event a producer fails or refuses to file a request for the allocation of his producer allotment to a farm, the county committee, after a reasonable effort to obtain a request from such producer has been made, may on the basis of information available to it, prepare the application on the producer's behalf and allocate his allotment, or unallocated part thereof, to the farm or farms on which the producer is engaged in the production of rice for the purposes of administering the provisions of the acreage allotment and marketing quota programs. If a producer, who does not have a producer allotment, or who is not eligible for an allotment, refuses to furnish the county committee with the applicable information requested herein regarding his farming operations, the county committee shall prepare a request on his behalf from any information available to it.

(c) The State committee, with the assistance of county committees, shall allocate the allotment determined under § 730.1017, § 730.1018, or § 730.1020, as applicable, for a producer to the farm or farms on which it has been determined that the producer will be actively engaged in the production of rice in the current year. The sum of the producer allotments allocated to any farm, adjusted where necessary to establish an allotment for the farm within its capabilities for producing rice consistent with practical farming operations, taking into consideration crop-rotation practices, the land, labor, water and equipment available for the production of rice, the sizes of fields, the arrangement of levees and drainage facilities, the soil and other physical factors affecting the production of rice on the farm in the current year and the acreage available for such adjustments, shall be the official farm rice acreage allotment for such farm: *Provided*, That the total acreage allocated to all farms for any producer shall not exceed such producer's allotment determined under § 730.1017, § 730.1018, or § 730.1020, as applicable, by more than 5 per centum or 5 acres, whichever is larger: *And provided further*, That the total acreage allocated to all farms for any new producer shall not exceed the smaller of (1) such producer's rice acreage allotment including the adjustment, if any, under this paragraph, or (2) the sum of the producer's shares in the acreages planted to rice in the current year by the new producer on all farms in which he has an interest in the acreage planted to rice. The sum of the upward adjustments in allocated acreages under this paragraph shall be limited to the sum of the downward adjustments that are not released by the producer for reapportionment to other farms under § 730.1024. The acreage resulting from the reduction of new producer allotments under this section shall be transferred to the reserve available to the State committee for appeals and corrections, missed farms, and adjustments under § 730.1017.

(d) Before approving a producer's request for the allocation of allotment acreage to a farm, the county committee must satisfy itself that the applicant will be actively engaged in the production of rice on such farm or, if not, that he is requesting the allocation of his producer allotment acreage to the farm for the purpose of (1) participating in the conservation reserve program, or (2) in order that in 1959 his allotment may be preserved for history purposes under the provisions of Public Law 85–266. To be considered actively engaged in the production of rice, the applicant must meet the definition of the term "engaged in the production of rice" as stated in paragraph (g) of § 730.1011. No request for the allocation of producer allotment acreage to a farm by a tenant will be approved unless the county committee is satisfied that such tenant will be making an active contribution toward the production of the crop on the farm throughout the normal period required to produce and harvest a crop of rice.

(e) If the county committee has reason to believe, after the establishment of any farm acreage allotment in accordance with this section, that a tenant whose allotment acreage was allocated to such farm is not in fact actively participating in the production of the rice crop which is being produced on the farm, a hearing shall be scheduled by the county committee and the tenant shall be invited to be present, or to be represented, at which time he shall be given an opportunity to substantiate his claim that he is actively engaged in the production of rice on the farm as was stated at the time of filing his request for the allocation of his producer allotment to the farm. If the county committee finds that such tenant is not actively participating in the production of the rice crop on the farm, except where allocation was made for the purpose of participating in the conservation reserve program or for the preservation of acreage, and therefore not actively engaged in the production of rice on such farm, it shall with the approval of the State committee recall such producer's allotment acreage previously allocated to the farm and adjust the farm rice acreage allotment accordingly. The county committee, immediately following the State committee's approval of such action, shall notify the farm operator of the revised farm acreage allotment. Such notice shall be on an official Form MQ–24 and will be accompanied by a letter of explanation as to the reason such action was taken to reduce the farm acreage allotment. A copy of the notice and letter shall be forwarded to all persons engaged in the production of rice on the farm. Any allotment acreage recalled by the county committee under this section shall not be available for apportionment or reallocation to any other farm.

§ 730.1022 *Determination of allotments for farms to which producer allotments have been allocated.* The sum of the rice acreage allotments determined for both old and new producers that are allocated to any farm under § 730.1021, including the adjustments, if any, as provided for under paragraph (c) of such section, shall be the rice acreage allotment for such farm for the current year. The sum of the farm rice acreage allotments so determined in any producer State, or "producer administrative area", where applicable, shall not exceed the State rice acreage allotment for such State or area and the acreage, if any, made available to the State from the national reserve provided for by Section 353 (a) of the act, minus any balance which is held in reserve for appeals, corrections, and missed producers.

§ 730.1023 *Mailing of notices of allotments for farms to which producer allotments have been allocated.* An official notice of the farm rice acreage allotment established for a farm in accordance with § 730.1022 shall be mailed by the county committee to the operator of the farm and to all other persons who will be engaged in the production of rice on such farm in the current year. A copy of each such notice approved shall be kept freely available in the county office for a period of not less than 30 calendar days. At the end of such period the copies of the notices shall remain readily available for further public inspection.

§ 730.1024 *Release and reapportionment of producer rice acreage allotments.* (a) In a producer State or area, a producer may, not later than the applicable closing date prescribed in this section, voluntarily release to the county committee all or any part of his producer rice acreage allotment that will not be allocated to a farm in the current year. Such released acreage shall be deducted from the allotment established for such producer and may be reapportioned by the county committee to other producers (old or new) in the same county in amounts determined to be fair and reasonable on the basis of the production of rice by the producer during the five years immediately preceding the current year; previous rice acreage allotments established for the producer; abnormal conditions affecting acreage; land, labor, water and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice. The closing dates, except as provided herein, in each producer State or area for the release and reapportionment of rice acreage allotments shall be as follows:

State	Release	Reapportionment
California	May 1	May 15.
Florida	February 28	March 14.
Louisiana[1]	April 24	May 1.
North Carolina	February 28	March 5.
Tennessee	April 1	April 15.
Texas	February 20	March 6.

[1] Producer administrative area.

(b) If the State committee considers that an application in writing is necessary before the county committee may consider reapportioning released acreage to a farm, such application must be filed in the county office by the applicant on or before the reapportionment date indicated herein, and the county committee shall consider all such timely filed applications within 10 calendar days thereafter, whereas, if the State committee considers that an application in writing is not necessary in order for the county committee to fairly and equitably apportion such acreage the county committee shall, to the extent apportionments are made, complete all reapportionments on or before the applicable dates indicated in this paragraph.

(c) Any part of a producer's allotment which is not assigned to a farm by reason of a field-size adjustment under § 730.1021 (c), shall, upon request of the producer, be considered as released acreage under this paragraph. In considering producers to receive additional allotment from released acreage, preference shall be given to producers having small allotments. Any producer rice acreage allotment released shall, in determining future rice acreage allotments be regarded as having been planted in the current year by the producer releasing such allotment if the producer is otherwise eligible for an old producer allotment, and shall not be considered as having been planted by the producer on the farm to which such released acreage is reapportioned.

(d) The release and reapportionment of rice acreage allotments under this section shall not become effective until approved by the State committee or upon behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman.

§ 730.1025 *Succession of interest in producer allotments.* (a) If a producer voluntarily retires from the production of rice, dies, or is declared incompetent by a court of competent jurisdiction, his history of rice production shall be apportioned in whole or in part among the heirs, devisees, or members of his family according to the extent to which they may continue, or have continued, his farming operations, if satisfactory proof of such relationship and succession of farming operations is furnished the county committee.

(b) If a producer voluntarily withdraws in whole or in part from the production of rice through the voluntary sale or lease of rice land, all or such part of such producer's history of rice production as may be ascribed to such land shall pass to the purchaser or leasee, as applicable: *Provided*, That in the event of a succession of interest in the case of a lease of rice land the lease is for not less than 3 years duration and became effective for the 1958 crop year: *And provided further*, That such transfer of rice history in the case of either a sale or lease the transfer of rice history is approved by the State committee.

(c) If a producer voluntarily withdraws in whole from the production of rice through the voluntary sale of a leasehold of rice land of five or more years duration, all of such producer's history of rice production as may be ascribed to such land shall pass to the purchaser if (1) such sale includes all irrigation equipment and other permanently installed rice-producing facilities attached to such land, and (2) such transfer of rice history is approved by the State committee.

(d) Upon dissolution of a partnership, the partnership's history of rice production shall be apportioned among the partners in such proportion as agreed upon in writing by the partners and approved by the State committee: *Provided*, That if a partnership was formed in a year when allotments were in effect and is dissolved after July 31, 1957, in less than five consecutive crop years after the partnership became effective, the rice acreage allotment established for the partnership and the rice history acreages credited to the partnership for each of the years during its existence shall be divided among the partners in the same proportion that each contributed to the allotment established for the partnership at the time such partnership was formed. The rice history acreage credited to each of the partners for the years prior to the time the partnership was formed shall revert to the person to whom it was originally credited.

FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE ON FARMS

§ 730.1026 *Report of farm data.* In a farm State, each producer, to the extent that such information is found necessary and is not already available to the county committee, shall furnish the county committee of the county in which such farm is located information requested by the county committee relative to changes in operations or control of the farm, size of the farm, or changes in the acreage of developed rice land on the farm. Information not so furnished shall be determined or appraised by the county committees on the basis of records in the county offices, available production and sales records, and other available information.

§ 730.1027 *Establishment of base acreages for old farms*—(a) *Basic factors.* In a farm State, the past production of rice on the farms and the acreage allotments previously established for such farms; abnormal conditions affecting acreage; land, labor and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice are the factors for apportioning the State rice acreage allotment among counties and, less appropriate reserves, to old farms. To reflect these factors, the county committee with the approval of the State committee or its representative shall establish a base acreage of rice for the current year for each old farm in the county. Prior to establishing such base acreages in the county the county committee shall determine for each old farm the acreage planted or considered planted to rice on the farm for the year immediately preceding the year for which the allotment is being established.

(b) *Acreage planted or considered planted to rice on any farm in preceding year.* The acreage planted or considered planted to rice on any farm for 1958 and 1959 shall be the rice acreage allotment established under applicable regulations for the farm for the year for which the acreage planted or considered planted to rice is being determined, except as provided for in subparagraphs (1) to (6) of this paragraph.

(1) If the farm rice acreage allotment on any farm was underplanted in any year for the purpose of reducing an amount of rice from a prior crop which was previously stored to postpone or avoid payment of a marketing quota penalty, the acreage planted or considered planted to rice on such farm in such year shall be the rice acreage on the farm, plus the acreage, if any, released in such year for reapportionment, and any acreage diverted from the production of rice through participation in the soil bank under an acreage reserve agreement and/or conservation reserve contract.

(2) The acreage diverted from the production of rice under an acreage reserve agreement on any farm shall be the smallest of (i) the acreage of rice entered on the acreage reserve agreement; (ii) the measured acreage reserve; or (iii) the farm rice acreage allotment minus the acreage actually planted to rice on the farm.

(3) The acreage diverted from the production of rice under a conservation reserve contract on any farm shall be the smallest of (i) the acreage placed in the conservation reserve program at the regular rate; (ii) the reduction in total soil bank base crops; or (iii) the amount by which the farm rice acreage allotment exceeds the sum of the acreage actually planted to rice and the acreage, if any, diverted from the production of rice under the acreage reserve program, except, that if the reduction in the total soil bank base crops on the farm exceeds the farm rice acreage allotment, or if the conservation reserve contract is found to be in violation because of failure to reduce the total soil bank base crops on the farm to the extent required the producer may elect to utilize a part of the conservation reserve acreage credit heretofore determined for the farm for the purpose of removing excess penalty rice from storage.

(4) If the reduction in total soil bank base crops on the farm exceeds the farm rice acreage allotment the conservation reserve acreage credit heretofore determined for the farm may be used for removing excess penalty rice from storage to the extent of the amount the reduction in total soil bank base crops exceeds the rice acreage allotment.

(5) If the conservation reserve contract is found to be in violation because

of failure to reduce the total soil bank base crops on the farm to the extent required all or any part of the conservation reserve acreage credit heretofore determined for the farm may be used for removing excess penalty rice from storage.

(6) Notwithstanding any provision in this section any acreage that is utilized for the purpose of removing excess penalty rice from storage shall not be considered acreage planted or considered planted to rice for history purposes, and in no event shall the acreage planted or considered planted to rice on a farm exceed the farm rice acreage allotment determined for such farm.

(c) *Recommended farm base acreage.* (1) If the county committee finds for any farm that the acreage planted or considered planted to rice on the farm in the preceding year adequately reflects the factors referred to in paragraph (a) of this section such acreage shall be the recommended base acreage for the farm for the current year. In making such finding the county committee shall take into consideration the factors referred to in subparagraph (2) of this paragraph.

(2) If the county committee finds that the acreage planted or considered planted to rice on any farm in the preceding year does not adequately reflect the factors referred to in paragraph (a) of this section because the acreage planted or considered planted to rice in the preceding year on such farm is substantially above or below the rice acreage planted or considered planted to rice on other farms in the county which are similar with respect to:

(i) The acreage of developed rice land on the farm;

(ii) The number of rice producing tenants or other labor on the farm;

(iii) The equipment available for producing a rice crop;

(iv) The soil, water and other physical factors affecting the production of rice; or

(v) An established crop-rotation system being carried out on the farm;

the acreage planted or considered planted to rice in the preceding year on such farm shall, for the purpose of establishing a recommended base acreage for the current year, be adjusted so as adequately to reflect the factors referred to in paragraph (a) of this section: *Provided*, That in no case shall such adjusted acreage exceed 110 percent or be less than 90 percent of the total rice acreage allotment established for such farm for the preceding year, except that if a definitely established crop-rotation system is being carried out on a farm such adjusted acreage shall not exceed the largest or be less than the smallest allotment established for such farm for any year during the three years immediately preceding the current year, unless a zero allotment was established for a farm in each of such years because an established crop-rotation system is being carried out on such farm and under such a system rice will be planted on the farm in the current year in which event the adjusted acreage shall not exceed the largest acreage planted or considered planted to rice on the farm during the five years immediately preceding the current year, or unless rice was planted on a farm in each of the three years immediately preceding the current year and it is determined that no rice will be planted on the farm in the current year under such a system in which event an adjusted acreage or zero may be established for such farm.

§ 730.1028 *Determination of allotments for old farms.* (a) The base acreages of rice determined under § 730.1027, adjusted pro rata to the county allotment minus an appropriate reserve established by the county committee with the approval of the State committee and the Secretary of not to exceed 5 per centum of the county allotment for appeals and corrections, missed farms, and adjustments under paragraph (b) of this section, shall be the acreage allotments for old farms. If, as a result of corrections, the total acreage allotted to farms in any county for which corrections are made is less than the total acreage originally allotted to such farms, such difference in acreage shall be added to the county reserve provided for in this paragraph without regard to the limitation thereon.

(b) The acreage allotment determined for any farm under paragraph (a) of this section may be increased if the county committee determines that the allotment is small in relation to allotments for other old farms in the county on the basis of the crop-rotation practices, the land, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice, taking into consideration the acreage required for the economic operation of the farm and the acreage available for such increases: *Provided*, That such increased allotments shall not exceed the allotments determined for other farms which are similar with respect to the factors set forth above. The acreage used in any county for increasing allotments under this paragraph shall not exceed the acreage made available therefor under paragraph (a) of this section.

(c) The acreage allotment determined for any farm under paragraph (a) or (b) of this section may be increased if the county committee determines that such allotment is inadequate for the farm because of an insufficient county acreage allotment or because rice was not planted on the farm during all of the preceding five years, taking into consideration the land, labor, water and equipment available for the production of rice and the acreage required for the economic operation of the farm: *Provided*, That the total of such increases in allotments under this paragraph shall not exceed the acreage made available to the county from the national reserve provided for by section 353 (a) of the act.

§ 730.1029 *Determination of allotments for new farms.* (a) In a farm State, the State committee with the assistance of the county committee shall determine a rice acreage allotment for the current year for each eligible new farm for which an acreage allotment is requested in writing on or before the 31st day of January of the current year. The rice acreage allotments for eligible new farms shall be determined on the basis of tillable land suitable for the production of rice, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice, and shall not exceed the allotments determined under § 730.1028 for old farms which are similar with respect to such factors.

(b) The request for a new farm rice acreage allotment shall be made by the farm operator, who must furnish the county committee with the following information relating to the farm for which the allotment is requested: the name and address of the farm operator; the name and address of the farm owner; the location and identification of the farm for which the allotment is being requested; the acreage of total land, cropland, and tillable land on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available for the current year; the source from which irrigation water will be obtained; the sum of other allotments established for the farm for the current year; the equipment owned by the applicant or otherwise available to him for producing rice in the current year; the applicant's past experience in the production of rice; whether or not either the owner or the operator will have an interest in a crop of rice in any other farm in the current year; whether the applicant expects to derive 50 percent or more of his livelihood in the current year from farming operations on the farm; and the producer's requested rice acreage allotment.

(c) To be eligible for a new farm rice acreage allotment, the application must be filed on or before the closing date referred to in paragraph (a) of this section, and the county committee must be satisfied that (1) the land on the farm for which the allotment is being requested is well suited to the production of rice; (2) that water and other irrigation facilities are readily available for use on such land in the current year; (3) that the applicant owns or has available for his use in the current year adequate rice-producing equipment; (4) that the applicant expects to derive 50 percent or more of his livelihood in the current year from farming operations on the farm for which the allotment is being requested, and (5) that neither the owner nor the operator of the farm will have an interest in the rice produced on any other farm in the current year.

(d) The rice acreage allotment for any new farm shall not exceed the smaller of (1) the rice acreage allotment requested or (2) the acreage of tillable land on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available: *Provided*, That if the acreage planted to rice on the farm in the current year is less than the allotment established under this section, the rice acreage allotment for the farm shall be reduced to the acreage planted to rice on the farm. The acreage resulting from any such reduction in each county shall be transferred to the reserve available

to the county committte for appeals and corrections, missed farms, and adjustments as provided for under § 730.1028.

(e) The sum of all new farm rice acreage allotments established in any State or area, as applicable, in accordance with the provisions of this section shall not exceed the reserve made available by the State committee for new farms in the State or area, as applicable, and such reserve shall not exceed 3 percent of the applicable State or area rice acreage allotment. Any part of such reserve that is not used for the establishment of new farm allotments shall not be used for any other purpose.

§ 730.1030 *Mailing of farm allotment notices.* Notice of the farm acreage allotment shall be mailed by the county committee to the operator of the farm and to each other producer on the farm who will have an interest in the rice crop on the farm in the current year. Such notice shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeeman or by an employee of the county office. Insofar as practicable all allotment notices in the county shall be mailed on the same date and in time to be received prior to the date on which the referendum to determine whether farmers favor or oppose farm marketing quotas will be held. A copy of each such notice approved shall be kept freely available in the county office for a period of not less than 30 calendar days. At the end of such period the copies of the notices shall remain readily available for further public inspection.

§ 730.1031 *Allotment for farms divided or combined.* The rice acreage allotment determined for a farm shall, if there is a division or combination, be apportioned in accordance with Part 719 of this chapter (Reconstitution of Farms, Farm Allotments, and Farm History, and Soil Bank Acreages; 23 F. R. 6731).

§ 730.1032 *Farms removed from agricultural production because of acquisition by Federal, State, or other agency having right of eminent domain.* The rice acreage allotment determined for a farm shall, if the farm is acquired for any purpose other than for the continued production of allotted crops, by any Federal, State, or other agency having the right of eminent domain, become available for use in providing allotments for other farms owned by the owner so displaced, and such apportionment shall be made in accordance with Part 719 of this chapter (Reconstitution of Farms, Farm Allotments, and Farm History, and Soil Bank Acreages; 23 F. R. 6731).

§ 730.1033 *Release and reapportionment of farm rice acreage allotments.* (a) In a farm State, any part of the rice acreage allotment determined for a farm that will not be planted in the current year and which is voluntarily released by the owner or operator of the farm to the county committee not later than the applicable closing date prescribed in this section shall be deducted from the rice acreage allotment determined for such farm, and may be reapportioned by the county committee to other farms (old or new) in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of the production of rice on the farm during the five years immediately preceding the current year farm acreage allotments previously established for the farm; abnormal conditions affecting acreage; land, labor, water and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice. The closing dates, except as provided herein, in each State, or area, for the release and reapportionment of farm rice acreage allotments shall be as follows:

State	Release	Reapportionment
Arkansas	May 1	May 8.
Illinois	May 1	May 8.
Louisiana [1]	April 24	May 1.
Mississippi	May 1	May 15.
Missouri	May 1	May 8.
Oklahoma	May 1	May 8.
South Carolina	April 1	April 15.

[1] Farm administrative area.

(b) If the State committee determines that an application in writing is necessary before the county committee may consider reapportioning released acreage to a farm, such application must be filed in the county office by the applicant on or before the reapportionment date indicated herein, and the county committee shall consider all such timely filed applications within 10 calendar days thereafter, whereas, if the State committee considers that an application in writing is not necessary in order for the county committee to fairly and equitably apportion such acreage the county committee shall, to the extent apportionments are made, complete all reapportionments on or before the applicable date indicated in this paragraph.

(c) In considering farms to receive apportionments from released acreage, preference shall be given to farms having small allotments. Any rice acreage allotments released for the current year shall, in determining future farm rice acreage allotments, be regarded as having been planted in such year on the farm releasing such allotment if the farm is otherwise eligible for an old farm allotment, and shall not be considered as having been planted on the farm to which such released acreage is reapportioned.

(d) The release and reapportionment of rice acreage allotments under this section shall not become effective until approved by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman.

MISCELLANEOUS

§ 730.1034 *Right to appeal of farm allotment to review committee.* (a) In the event marketing quotas are applicable in the current year, any producer who is dissatisfied with the farm rice acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm rice acreage allotment and marketing quota, file an application to have such allotment reviewed by a review committee appointed by the Secretary. The procedures governing the review of farm acreage allotments and marketing quotas are contained in the marketing quota review regulations (Part 711 of this chapter, 21 F. R. 9365), and any amendments thereto, which are available at the office of the county committee.

(b) In the event marketing quotas are not applicable in the current year, any producer who is dissatisfied with his farm rice acreage allotment may file an appeal for reconsideration of such allotment by the county committee. The appeal and the facts constituting the basis therefor must be submitted in writing and postmarked or delivered to the office of the county committee within 15 days after the date of mailing of the notice of allotment. If the applicant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within 15 days after the date of mailing the notice of the decision of the county committee. If the appellant is dissatisfied with the decision of the State committee, he may, within 15 days after the date of mailing of the notice of the decision of the State committee request a review of his case by the Director of the Grain Division, Commodity Stabilization Service, whose decision shall be final.

§ 730.1035 *Applicability of regulations.* (a) Sections 730.1010 to 730.1035, inclusive, shall govern the establishment of farm and producer rice acreage allotments in connection with the marketing quota and price support programs for the current year.

(b) The regulations in this subpart are contingent upon the annual proclamation of a national acreage allotment of rice for the current year by the Secretary pursuant to section 352 of the Agricultural Adjustment Act of 1938, as amended.

NOTE: The reporting and record-keeping requirements contained herein have been approved by, and subsequent reporting and record-keeping requirements will be subject to the approval of the Bureau of Budget in accordance with the Federal Reports Act of 1942.

Issued this 29th day of October 1958.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 58-9105; Filed, Oct. 31, 1958; 8:54 a. m.]

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

[Orange Reg. 347]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.925 *Orange Regulation 347*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges,

grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, except Temple 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 thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this 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; 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. Shipments of oranges, except Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on October 28, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, except Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F. R. 6676).

(2) During the period beginning at 12:01 a. m., e. s. t., November 3, 1958, and ending at 12:01 a. m., e. s. t., November 17, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in the production area, which do not grade at least U. S. No. 1 Bronze; or

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than 2$^{7}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title): *Provided*, That in determining the percentage of oranges in any lot which are smaller than 2$^{7}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{14}/_{16}$ inches in diameter and smaller.

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

Dated: October 29, 1958.

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

[F. R. Doc. 58-9115; Filed, Oct. 31, 1958; 9:14 a. m.]

[Grapefruit Reg. 295]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.926 *Grapefruit Regulation 295*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, 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 thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this 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; 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. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on October 28, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended June 2, 1955 (Chapter 29760).

(2) During the period beginning at 12:01 a. m., e. s. t., November 3, 1958, and ending at 12:01 a. m., e. s. t., November 17, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which are not mature and do not grade at least U. S. No. 1 Bronze;

(ii) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3$^{1}/_{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of

tolerances, specified in the revised United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3 5/16 inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said revised United States Standards for Florida Grapefruit.

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

Dated: October 29, 1958.

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

[F. R. Doc. 58-9114; Filed, Oct. 31, 1958; 9:14 a. m.]

[Tangerine Reg. 201]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.927 *Tangerine Regulation 201*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, 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 thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this 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; 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. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on October 28, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) During the period beginning at 12:01 a. m., e. s. t., November 3, 1958, and ending at 12:01 a. m., e. s. t., November 17, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U. S. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 176 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19/16 inches; capacity 1,726 cubic inches).

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

Dated: October 29, 1958.

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

[F. R. Doc. 58-9116; Filed, Oct. 31, 1958; 9:14 a. m.]

[Tangelo Reg. 7]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.928 *Tangelo Regulation 7*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, 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 thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this 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; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than November 3, 1958. The committee held an open meeting on October 28, 1958, to consider recommendations for a regulation, in accordance with the said amended marketing agreement and order, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committee has been disseminated among shippers of tangelos, grown in the production area, and this section, including the effective time thereof is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this section effective on the date hereinafter set forth so as to provide for the regulation of the handling of tangelos, grown in the production area, at the start of this marketing season; and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relative to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(2) During the period beginning at 12:01 a. m., e. s. t., November 3, 1958, and ending at 12:01 a. m., e. s. t., November 17, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U. S. No. 2; or

(ii) Any tangelos, grown in the production area, which are of a size smaller

than 2⅛ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

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

Dated: October 29, 1958.

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

[F. R. Doc. 58-9117; Filed, Oct. 31, 1958; 9:14 a. m.]

[Lemon Reg. 763]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

§ 953.870 *Lemon Regulation 763*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become 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 lemons 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 lemons; 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 October 29, 1958.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 2, 1958, and ending at 12:01 a. m., P. s. t., November 9, 1958, are hereby fixed as follows:

(i) District 1: Unlimited movement;
(ii) District 2: 156,240 cartons;
(iii) District 3: 29,760 cartons.

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

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

Dated: October 30, 1958.

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

[F. R. Doc. 58-9130; Filed, Oct. 31, 1958; 9:15 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter F—Procedure and Administration

[T. D. 6331]

PART 301—PROCEDURE AND ADMINISTRATION

PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS

The following regulations are hereby prescribed under section 6104 of the Internal Revenue Code of 1954, as amended by section 75 (a) of the Technical Amendments Act of 1958 (72 Stat. 1660), relating to publicity of information required from certain exempt organizations and certain trusts. Except as otherwise specifically provided therein, such regulations shall be effective on and after August 17, 1954.

Sec.
301.6104 Statutory provisions; publicity of information required from certain exempt organizations and certain trusts.
301.6104-1 Public inspection of applications for tax exemption.
301.6104-2 Publicity of information on certain information returns.

AUTHORITY: §§ 301.6104 to 301.6104-2 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

§ 301.6104 *Statutory provisions; publicity of information required from certain exempt organizations and certain trusts.*

SEC. 6104. *Publicity of information required from certain exempt organizations and certain trusts*—(a) *Inspection of applications for tax exemption*—(1) *Public inspection*—(A) *In general.* If an organization described in section 501 (c) or (d) is exempt from taxation under section 501 (a) for any taxable year, the application filed by the organization with respect to which the Secretary or his delegate made his determination that such organization was entitled to exemption under section 501 (a), together with any papers submitted in support of such application, shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary or his delegate). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary or his delegate shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary or his delegate shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) *Withholding of certain information.* Upon request of the organization submitting any supporting papers described in subparagraph (A), the Secretary or his delegate shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary or his delegate shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) the public disclosure of which he determines would adversely affect the national defense.

(2) *Inspection by committees of Congress.* Section 6103 (d) shall apply with respect to—

(A) The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501 (a) for any taxable year, and

(B) Any other papers which are in the possession of the Secretary or his delegate and which relate to such application,

as if such papers constituted returns.

(b) *Inspection of annual information returns.* The information required to be furnished by sections 6033 (b) and 6034, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary or his delegate may prescribe.

[Sec. 6104 as amended by sec. 75 (a), Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6104-1 *Public inspection of applications for tax exemption*—(a) *Applications open to inspection*—(1) *In general.* An application for exemption, together with any supporting documents, filed by an organization described in section 501 (c) or (d) of the Internal Revenue Code of 1954 (or in the corresponding provisions of any prior revenue law) shall be open to public inspection on or after November 3, 1958, in accordance with section 6104 (a) (1) and the provisions of this section, if the Com-

missioner or district director has determined, on the basis of such application, that such organization is exempt from taxation for any taxable year under section 501 (a) of the Internal Revenue Code of 1954 (or under the corresponding provisions of any prior revenue law). Certain applications for exemption have been destroyed pursuant to Congressional authorization and therefore will not be available for inspection.

(2) *Claim for exemption filed under section 503 or 504 and the regulations thereunder.* Claims for exemption filed to reestablish exempt status after denial thereof under the provisions of section 503 or 504 of the Internal Revenue Code of 1954 (or under the corresponding provisions of any prior revenue law), relating to denial of exemption because of certain prohibited transactions or an unreasonable accumulation of income, are considered to be applications for exemption for purposes of section 6104 (a) (1) and this section.

(3) *Requirement of exempt status.* An application for exemption and supporting documents shall not be available for public inspection before the organization filing such application has been determined, on the basis of such application, to be exempt from taxation for any taxable year. On the other hand, if the organization has been determined to be exempt for any taxable year, the application for exemption with respect to which such determination was made shall not be withheld from public inspection on the grounds that such organization is determined not to be entitled to exemption for any other taxable year or years.

(b) *Meaning of terms*—(1) *Application for exemption.* (i) For purposes of this section, the term "application for exemption" means the documents described in subdivision (ii) of this subparagraph which the organization was required to file when it applied for exemption.

(ii) (*a*) With respect to an organization for which an application for exemption form is prescribed, the application for exemption includes such form and all documents and statements required to be filed by such form.

(*b*) With respect to an organization described in section 501 (c) or (d) for which no application for exemption form is prescribed, the application for exemption includes the application letter and a conformed copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code of regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization, and statements showing the character of the organization, the purpose for which it was organized, its actual activities, sources of income and receipts and the disposition thereof, and whether or not any of its income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual.

(*c*) With respect to a mutual insurance company, the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include copies of the policies or certificates of membership issued by such company.

(*d*) With respect to a title holding company described in section 501 (c) (2), if the organization for which title is held has not been specifically notified in writing by the Internal Revenue Service that it is held to be exempt under section 501 (a), the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include the statements or documents which would be considered to be included in the application for exemption of the organization for which title is held.

(*e*) With respect to a State chartered credit union described in section 501 (c) (14), the application for exemption shall, in addition to the statements and documents indicated in (*b*) of this subdivision, include a statement indicating the State and date of incorporation and showing that the State credit union law with respect to loans, investments, and dividends, if any, is being complied with.

(iii) The term "application for exemption" does not include a request for a ruling as to whether a proposed transaction is a prohibited transaction under section 503 of the Internal Revenue Code of 1954 (or under the corresponding provisions of any prior revenue law).

(2) *Supporting document.* For purposes of this section, the term "supporting document" means any statement or document submitted by an organization in support of its application for exemption which is not specifically required by subdivision (ii) of subparagraph (1) of this paragraph. For example, a legal brief submitted in support of an application for exemption is a supporting document.

(c) *Withholding of certain information*—(1) *Trade secrets, patents, processes, styles of work, or apparatus*—(i) *In general.* Any information which is submitted by an organization whose application for exemption is open to inspection under this section and which is determined by the Commissioner to relate to any trade secret, patent, process, style of work, or apparatus of the organization submitting such information shall, upon request in writing of such organization, be withheld from public inspection under section 6104 (a) (1) and this section, if the Commissioner determines that the disclosure of such information would adversely affect the organization.

(ii) *Request for withholding of information.* Requests for the withholding of information from public inspection as provided in subdivision (i) of this subparagraph shall—

(*a*) In the case of applications for exemption filed before November 3, 1958, be made to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D. C.; or

(*b*) In the case of applications for exemption filed on or after November 3, 1958, be filed with the office with which the taxpayer filed the documents in which the material to be withheld is contained. The request shall clearly identify the material desired to be withheld (the document, page, paragraph, and line) and shall include the reasons for the organization's position that the information is of the type which may be withheld from public inspection.

(iii) *Determination.* An organization which has filed a request under the provisions of this subparagraph will be notified of the determination as to whether the information to which the request relates will be withheld from public inspection.

(2) *National defense material.* The Internal Revenue Service shall withhold from public inspection any information which is submitted by an organization whose application for exemption is open to inspection under this section the public disclosure of which the Commissioner determines would adversely affect the national defense.

(d) *Place of inspection.* Applications for exemption, together with any supporting documents, which are open to public inspection under section 6104 (a) (1) shall be available for inspection on or after November 3, 1958, in the Office of the Director, Public Information Division, Internal Revenue Service, Washington 25, D. C., regardless of when or where such applications were filed except for such applications as have been destroyed pursuant to Congressional authority. In addition, in the case of an application for exemption filed on or after September 3, 1958, a copy of such application (as defined in paragraph (b) (1) of this section), but not the supporting documents, shall also be available for public inspection on or after November 3, 1958, in the office of the district director of internal revenue with whom the application was required to be filed.

(e) *Procedure for public inspection of applications for exemption*—(1) *Request for inspection.* Applications for exemption and the supporting documents shall be available for public inspection only upon request. If inspection at the national office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington 25, D. C. Requests for inspection in the office of a district director of internal revenue shall be made in writing to the appropriate district director. All requests for inspection must include the name and address of the organization which filed the application for exemption the inspection of which is requested. In addition, if such organization has more than one application for exemption open to public inspection under the provisions of section 6104 (a) (1), only the most recent of such applications shall be made available for inspection unless the request for inspection specifically states otherwise.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. An application for exemption will be made available for public inspection at such

reasonable and proper times as not to interfere with its use by the Internal Revenue Service or to exclude other persons from inspecting it. In addition, the Commissioner or district director may limit the number of applications for exemption to be made available to any person for inspection on a given date. The public inspection authorized by section 6104 (a) (1) will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Copying of documents.* Applications for exemption and supporting documents will be made available on an inspection basis only. Notes may be taken and copies may be made manually, but not photographically.

(f) *Statement of exempt status.* A statement setting forth the following information with respect to an organization shall be furnished to any person, upon request in writing, after the application for exemption of such organization is open to public inspection under section 6104 (a) (1):

(1) The subsection and paragraph of section 501 of the Internal Revenue Code of 1954 (or the corresponding provision of any prior revenue law) under which the organization has been determined, on the basis of such application, to qualify for exemption from taxation; and

(2) Whether the organization is currently held to be exempt.

Request for such information may be made in writing to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D. C., or to the district director of internal revenue with whom the organization's application for exemption was required to be filed.

§ 301.6104–2 *Publicity of information on certain information returns*—(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) The information furnished, pursuant to section 6033 (b) (relating to annual information required from certain organizations described in section 501 (c) (3) which are exempt under section 501 (a)), on pages 3 and 4 of Form 990–A; and

(2) The information furnished, pursuant to section 6034 (relating to annual information required of trusts claiming a charitable deduction under section 642 (c)), on Form 1041–A.

Such information shall be available to any person during the regular hours of business in the office of the district director of internal revenue with whom the Form 990–A or 1041–A was required to be filed. Such information may be used by the Commissioner for the purpose of making and publishing statistical or other studies.

(b) *Copying of material available for inspection.* The information which is a matter of public record under section 6104 (b) will be made available on an inspection basis only. Notes may be taken and copies may be made manually, but not photographically.

Because this Treasury decision constitutes a general statement of policy and establishes rules of Departmental practice and procedure and because of the immediate need of such rules, it is found that it is unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under section 4 (a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4 (c) of that Act.

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: October 30, 1958.

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

[F. R. Doc. 58-9121; Filed, Oct. 31, 1958; 8:57 a. m.]

TITLE 31—MONEY AND FINANCE

Chapter II—Fiscal Service, Department of the Treasury

Subchapter B—Bureau of the Public Debt

[1958 Dept. Circular 530, 8th Rev. Amdt. 2]

PART 315—UNITED STATES SAVINGS BONDS

EXCLUSIONS FROM COMPUTATION

OCTOBER 31, 1958.

Section 315.11 (c) of Department Circular No. 530, Eighth Revision, as amended (31 CFR Part 315), dated December 26, 1957, is hereby further amended by revising it as follows:

§ 315.11 *Computation of amount.* * * *

(c) *Bonds that may be excluded from computation.* There need not be taken into account:

(1) Bonds on which that person is named beneficiary;

(2) Bonds in which his interest is only that of a beneficiary under a trust;

(3) Bonds to which he has become entitled under § 315.66 as surviving beneficiary upon the death of the registered owner, as an heir or legatee of the deceased owner, or by virtue of the termination of a trust or the happening of any other event;

(4) Bonds of Series E purchased with the proceeds of matured bonds of Series A, Series C–1938, and Series D, where such matured bonds were presented for that purpose;

(5) Bonds of Series E bearing issue dates from May 1, 1941, to December 1, 1945, inclusive, held by individuals in their own right which are not more than $5,000 (maturity value) in excess of the prescribed limit;

(6) Bonds of Series E or Series H reissued under § 315.60 (b) (1);

(7) Bonds of Series E or Series H reissued in the name of a trustee of a personal trust estate which did not represent excess holdings prior to such reissue;

(8) Bonds of Series E or Series H purchased with the proceeds of bonds of Series F or Series G, at or after maturity, where such matured bonds are presented for that purpose in accordance with the provisions of Department Circular No. 653, Fourth Revision, as amended, offering bonds of Series E, and Department Circular No. 905, Revised, as amended, offering bonds of Series H.

(Sec. 22, 49 Stat. 21, as amended; 31 U. S. C. 757c)

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Public Law 404, 79th Cong.; 60 Stat. 237) is found to be unnecessary with respect to this amendment.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-9082; Filed, Oct. 31, 1958; 8:50 a. m.]

[1958 Dept. Circular 653, 4th Rev. Amdt. 3]

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

SPECIAL OFFERING TO OWNERS OF OUTSTANDING MATURED AND MATURING SAVINGS BONDS OF SERIES F AND G

OCTOBER 31, 1958.

Department Circular No. 653, Fourth Revision, dated April 22, 1957, as amended (31 CFR Part 316), is hereby further amended, effective December 1, 1958, by revising § 316.1a as follows:

§ 316.1a *Special offering to owners of outstanding matured and maturing savings bonds of Series F and G*—(a) *General.* The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended (31 U. S. C. 757c), hereby offers owners of outstanding bonds of Series F and Series G the privilege of applying the proceeds of the bonds, at or after maturity, to the purchase of bonds of Series E without regard to the limitation on holdings prescribed in § 316.8.

(b) *Restrictions and conditions.* This offering is subject to the following restrictions and conditions:

(1) It extends to all owners of matured and maturing bonds of Series F and Series G, except bonds registered in the names of commercial banks in their own right (as distinguished from a representative or fiduciary capacity). For this purpose commercial banks are defined as those accepting demand deposits.

(2) It is subject to the restrictions prescribed in § 315.6 of this chapter (Department Circular No. 530).

(3) The matured bonds must be presented to a Federal Reserve Bank or Branch for the specified purpose of taking advantage of this offering.

(4) Bonds of Series E may be purchased with the proceeds of the matured bonds only up to the denominational amounts that the proceeds thereof will fully cover; any difference between such proceeds and the purchase price of bonds of Series E will be paid to the owner.

(5) The bonds of Series E will be registered in the name of the owner in any authorized form of registration.

(6) They will be dated as of the first day of the month in which the matured bonds are presented to a Federal Reserve Bank or Branch.

(c) *Termination of offering.* This offering will continue until terminated by the Secretary of the Treasury.

(Sec. 22, 49 Stat. 21, as amended; 31 U. S. C. 757c)

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) is found to be unnecessary with respect to this amendment.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-9083; Filed, Oct. 31, 1958; 8:51 a. m.]

[1958 Dept. Circular 905, Revised, Amdt. 3]

PART 332—OFFERING OF UNITED STATES SAVINGS BONDS SERIES H

SPECIAL OFFERING TO OWNERS OF OUTSTANDING MATURED AND MATURING SAVINGS BONDS OF SERIES F AND G

OCTOBER 31, 1958.

Department Circular No. 905, Revised, dated April 22, 1957, as amended (31 CFR Part 332) is hereby further amended, effective December 1, 1958, by revising § 332.1a as follows:

§ 332.1a *Special offering to owners of outstanding matured and maturing savings bonds of Series F and G*—(a) *General.* The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended (31 U. S. C. 757c) hereby offers owners of outstanding bonds of Series F and Series G the privilege of applying the proceeds of the bonds, at or after maturity, to the purchase of bonds of Series H without regard to the limitation on holdings prescribed in § 332.9.

(b) *Restrictions and conditions.* This offering is subject to the following restrictions and conditions:

(1) It extends to all owners of matured and maturing bonds of Series F and Series G, except bonds registered in the names of commercial banks in their own right (as distinguished from a representative or fiduciary capacity). For this purpose commercial banks are defined as those accepting demand deposits.

(2) It is subject to the restrictions prescribed in § 315.6 of this chapter (Department Circular No. 530).

(3) The matured bonds must be presented to a Federal Reserve Bank or Branch for the specified purpose of taking advantage of this offering.

(4) Bonds of Series H may be purchased with the proceeds of the matured bonds only up to the denominational amounts that the proceeds thereof will fully cover; any difference between such proceeds and the purchase price of bonds of Series H will be paid to the owner.

(5) The bonds of Series H will be registered in the name of the owner in any authorized form of registration.

(6) They will be dated as of the first day of the month in which the matured bonds are presented to a Federal Reserve Bank or Branch.

(c) *Termination of offering.* This offering will continue until terminated by the Secretary of the Treasury.

(Sec. 22, 49 Stat. 21, as amended; 31 U. S. C. 757c)

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) is found to be unnecessary with respect to this amendment.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-9084; Filed, Oct. 31, 1958; 8:51 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

Subchapter L—Security of Waterfront Facilities

[CGFR 58-43]

PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES OR VESSELS

PART 126—HANDLING OF EXPLOSIVES OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES

PERMITS FOR HANDLING DANGEROUS ARTICLES AND SUBSTANCES

By Executive Order 10173 the President found that the security of the United States is endangered by reason of subversive activities and prescribed certain regulations relating to the safeguarding against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature of vessels, harbors, ports, and waterfront facilities in the United States, and all territory and waters, continental or insular, subject to the jurisdiction of the United States exclusive of the Canal Zone. Because of the national emergency declared by the President, it is found that compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedure thereon, and effective date requirements thereof) is impracticable and contrary to the public interest.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Executive Order 10173, as amended by Executive Orders 10277 and 10352, the following amendments in this document are prescribed and shall become effective upon the date of publication of this document in the FEDERAL REGISTER:

1. Section 125.15 (a) is amended by adding a new subparagraph (4), which reads as follows:

§ 125.15 *Access to waterfront facilities, and port and harbor areas, including vessels and harbor craft therein.* (a) * * *

(4) Those essential to the interests of national security and defense, to prevent loss, damage or injury, or to insure the observance of rights and obligations of the United States.

(40 Stat. 220, as amended; 50 U. S. C. 191, E. O. 10173, 15 F. R. 7005, 3 CFR, 1950 Supp., E. O. 10277, 16 F. R. 7537, 3 CFR, 1951 Supp., E. O. 10352, 17 F. R. 4607, 3 CFR, 1952 Supp. Interpret or apply R. S. 4517, as amended, 4518, as amended, secs. 19, 2, 23 Stat. 58, 118, as amended, sec. 7, 49 Stat. 1936, as amended; 46 U. S. C. 570, 571, 572, 2, 689)

2. Section 126.17 is amended to read as follows:

§ 126.17 *Permits required for handling designated dangerous cargo.* Designated dangerous cargo may be handled, loaded, discharged, or transported at any designated waterfront facility only if a permit therefor has been issued by the Captain of the Port. This permit requirement may be waived, at the discretion of the Captain of the Port, when such cargoes are contained within railroad cars or highway vehicles which are moved on or across a waterfront facility used primarily for the transfer of railroad cars or highway vehicles to or from a railroad or highway vehicle ferry or carfloat; provided such designated cargoes are not removed from, or placed in, the railroad car or highway vehicle while it is in or on such waterfront facility.

3. Section 126.27 is amended to read as follows:

§ 126.27 *General permit for handling dangerous articles and substances.* A general permit is hereby issued for the handling, storing, stowing, loading, discharging or transporting of dangerous articles and substances (other than designated dangerous cargo) at designated waterfront facilities, conditioned upon the observance and fulfillment of the following:

(a) The conditions set forth in § 126.15 shall at all times be strictly observed.

(b) The following classes of dangerous articles and substances as classified in the regulations entitled "Explosives or Other Dangerous Articles on Board Vessels" (46 CFR Part 146), in the amounts specified, shall not be handled, stored, stowed, loaded, discharged, or transported, except when contained within railroad or highway vehicles being transported across or on waterfront facilities used primarily for the transfer of railroad or highway vehicles to or from a railroad car ferry or highway vehicle ferry, or carfloats, without written notification to the Captain of the Port:

(1) Explosives, Class B, in excess of 1 net ton at any one time.

(2) Explosives, Class C, in excess of 10 net tons at any one time.

(3) Inflammable liquids, in containers, in excess of 10 net tons at any one time.

(4) Inflammable solids or oxidizing materials, in excess of 100 net tons at any one time.

(5) Inflammable compressed gases, in excess of 10 net tons at any one time.

(6) Poisons, Class A, or radioactive materials, Class D, for which special approval for water transportation is re-

quired by the Commandant in 46 CFR 146.25-30. Storage of all Class D radioactive materials shall be so arranged as to preclude a gamma radiation in excess of 200 milliroentgens per hour or physical equivalent at any readily accessible surface.

(c) Explosives or other dangerous articles prohibited from or not permitted transportation by 46 CFR Part 146 shall not be present on the waterfront facility.

(d) Inflammable liquids and compressed gases shall be so handled and stored as to provide maximum separation between articles consisting of acids, corrosive liquids, or combustible materials. Storage for inflammable solids or oxidizing materials shall be so arranged as to prevent moisture coming in contact therewith.

(e) Acids and corrosive liquids shall be so handled and stored as to prevent such acids and liquids, in event of leakage, from contacting any organic materials.

(f) Poisonous gases, poisonous liquids, and poisonous solids shall be so handled and stored as to prevent their contact with acids, corrosive liquids, inflammable liquids or inflammable solids.

(g) Dangerous articles and substances which may be stored on the waterfront facility shall be arranged in such manner as to retard the spread of fire. This may be accomplished by interspersing piles of dangerous articles with piles of inert or less combustible materials.

(h) All dangerous articles and substances stored on the waterfront facility shall be packaged, marked, and labeled in accordance with 46 CFR Part 146.

(40 Stat. 220, as amended; 50 U. S. C. 191, E. O. 10173, 15 F. R. 7005, 3 CFR, 1950 Supp., E. O. 10277, 16 F. R. 7537, 3 CFR, 1951 Supp., E. O. 10352, 17 F. R. 4607, 3 CFR, 1952 Supp.)

Dated: October 28, 1958.

[SEAL] J. A. HIRSHFIELD,
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 58-9079; Filed, Oct. 31, 1958; 8:50 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 8—NATIONAL SERVICE LIFE INSURANCE

MISCELLANEOUS AMENDMENTS

1. Section 8.95 is revised to read as follows:

§ 8.95 *Authority for the total disability income provision provided in the National Service Life Insurance Act of 1940, as amended.* The total disability income provision for National Service life insurance authorized by section 602 (v) of the National Service Life Insurance Act, 1940, as amended, is subject in all respects to the provisions of the National Service Life Insurance Act, 1940, or any amendments thereto, and all regulations under the National Service Life Insurance Act now in force or hereafter adopted, all of which together with the insured's application, report of physical examination, tender of premium, and the total disability income provision shall constitute the contract.

2. A new § 8.95a is added to read as follows:

§ 8.95a *Withdrawal of the right to issue the total disability income provision (§ 8.98) authorized by section 602 (v) of the National Service Life Insurance Act of 1940, as amended August 1, 1946.* Public Law 85-678, effective November 1, 1958, amended section 602 (v) of the National Service Life Insurance Act of 1940 and terminated, as of October 31, 1958, the authority for issuing the total disability income provision incorporated in § 8.98 except for the right to reinstate such provision in accordance with the Veterans Administration regulations and except for the right to reinstate or replace such total disability income provision under § 8.96a (a) and (b). The total disability income provision (§ 8.98) which has been issued and made part of National Service life insurance policies will remain in effect in accordance with the provisions of § 8.98 unless surrendered pursuant to § 8.96 (a).

3. In § 8.96, paragraph (a) is amended to read as follows:

§ 8.96 *Application for total disability income provision and application for reinstatement thereof.* (a) Application for the total disability income provision under National Service life insurance, authorized by section 602 (v) of the National Service Life Insurance Act of 1940, as amended by Public Law 85-678, effective November 1, 1958, and the report of physical examination should be on such forms as may be prescribed by the Veterans Administration, but any statement in writing sufficient to identify the applicant and the amount of insurance applied for, together with a satisfactory report of a physical examination and remittance to cover the first monthly premium will be sufficient as an application for the total disability income provision. Total disability insurance with benefits at the rate of $10 per month will be granted for each $1,000 of National Service life insurance in force in full multiples of $500, but not to exceed the amount of life insurance, other than extended insurance, in force under the policy at the time of the application, upon compliance with the above requirements provided the applicant is in good health: *Provided further,* That the total disability income provision authorized by section 602 (v) of the National Service Life Insurance Act, as amended by Public Law 85-678, shall not be added to a National Service life insurance policy containing the total disability income provision issued under section 602 (v) of the act, as amended August 1, 1946, except (1) upon complete surrender of such total disability income provision with all claims thereunder, (except as to rights which have matured for a period prior to the surrender), (2) written application signed by the applicant, (3) proof, satisfactory to the Administrator, that the applicant is in good health, and (4) payment of the first monthly premium determined by the Administrator to be required in such cases: *Provided further,* That no total disability income provision shall be issued on insurance granted under the provisions of section 620 of the National Service Life Insurance Act, as amended.

4. In § 8.96a, paragraph (b) is amended to read as follows:

§ 8.96a *Application for reinstatement and issue of the total disability income provision pursuant to section 5 of the Servicemen's Indemnity Act of 1951 and section 623 of the National Service Life Insurance Act.* * * *

(b) Any person having a National Service life insurance policy on a permanent plan with a total disability income provision attached who surrendered such insurance prior to January 1, 1957, pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability income provision was in force, upon meeting the requirements for issuance of National Service life insurance pursuant to the provisions of § 8.0 (d) (1) may be issued at the same time a total disability income provision without medical examination upon written application signed by the applicant and payment of the required premium: *Provided,* That the total disability income provision issued pursuant to this paragraph shall be on the same terms and conditions and shall not be in excess of the total disability insurance which lapsed at the time the life insurance was surrendered prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951. If the applicant was discharged prior to January 1, 1957, the requirements for issuance of the disability provision under this paragraph must be met within 120 days following the applicant's separation from active service.

5. In § 8.97, the headnote is amended and a new paragraph (c) is added to read as follows:

§ 8.97 *Effective date of total disability income provision authorized by the National Service Life Insurance Act of 1940, as amended by Public Law 85-678, effective November 1, 1958.* * * *

(c) No protection shall be granted on the total disability income provision issued under Public Law 85-678 unless the total disability commenced on or after November 1, 1958, and subsequent to the date of application for such provision or the effective date thereof, whichever is later.

6. Section 8.99 is revised to read as follows:

§ 8.99. *Total disability income provision for National Service life insurance authorized by the National Service Life Insurance Act of 1940, as amended by Public Law 85-678, effective November 1, 1958.* The total disability income provision for National Service life insurance authorized by the National Service Life Insurance Act of 1940, as amended by Public Law 85-678, is as follows:

NATIONAL SERVICE LIFE INSURANCE

TOTAL DISABILITY INCOME PROVISION

Attached to and made a part of Policy No. ------ on the life of ---------- age of insured.

PREMIUMS

Monthly ----------
Quarterly ----------
Semiannual ----------
Annual ----------

If the insured becomes totally disabled before the anniversary of this policy nearest his 60th birthday and remains so disabled for at least 6 consecutive months, there will be paid to the insured, for as long as the total disability continues, a monthly income of $10 for each $1,000 of face amount of this policy, and the payment of the premiums for this provision (as well as for this policy) will be waived, subject to the following clauses (A) to (L):

(A) Total disability is defined as any one of the following:

(1) Any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation,

(2) The permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye,

(3) The total loss of hearing of both ears, or

(4) The organic loss of speech.

(B) Total disability must be continuous and must exist for at least 6 consecutive months. It must have started:

(1) Before the anniversary of the policy nearest the insured's 60th birthday,

(2) After the date of application for this provision or the effective date hereof, whichever is later, and

(3) While this provision is in effect.

(C) The insured must file written application for total disability income benefits and must file the required proof that clauses (A) and (B) above have been fulfilled. The required proof must be filed while this provision is in force or within 1 year after this provision has ceased to be in effect. In the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and required proof may be filed by the beneficiary within 6 months after the date of death of the insured. In such cases, except for total disability which is due to one of the specific causes listed in (A) (2), (A) (3), and (A) (4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A) (2), (A) (3), and (A) (4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof. Any disability income payments due the insured and not paid during his lifetime will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time require proof of continuance of total disability. If the insured fails to furnish evidence satisfactory to the Administrator of the continuance of such total disability, or if it appears to the Administrator that the insured is not totally disabled, no further total disability income payments will accrue and no further waiver of the payment of premiums will be granted. Thereafter, premiums on this policy (including this provision) will become due and payable as provided in the policy and in this provision.

(G) This provision will cease to be in effect and no further premiums for it will be payable on the anniversary of this policy nearest the insured's 60th birthday, or if this policy or this provision lapses, or if this policy is surrendered for its net cash value, or for extended term insurance, or is surrendered for paid-up life insurance of less than $1,000, or if the policy matures as an endowment, or expires as term insurance.

(H) If this policy is surrendered for paid-up life insurance of not less than $1,000 face amount, this provision may be continued by the payment of the required premiums as they become due. In that event the face amount of this policy, for the purposes of this provision only, will be the largest multiple of $500 which does not exceed the amount of the paid-up life insurance.

(I) If this provision has lapsed, it may be reinstated provided the following requirements are met:

(1) A written application signed by the insured, and evidence of health satisfactory to the Administrator must be furnished.

(2) The required premiums and interest must be paid.

(J) If there is a change of plan under this policy which results in a larger premium for tihs provision, then in order to continue this provision there must be paid (1) the differences between the premiums already paid for this provision and those that would have been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 2½ percent a year compounded annually on insurance issued under section 723 (b) of Title 38, United States Code, as amended by Public Law 85-896, and on other National Service life insurance at the rate of 3 percent a year compounded annually. To this extent the provision entitled "Change of Plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy. If the policy to which this provision is attached is a participating policy, it may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such benefit. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of this policy), and the payment thereafter of the same amount on each succeeding monthly premium due date of this policy. Premiums for this provision are payable until the anniversary of this policy nearest the insured's 60th birthday or until the end of the premium paying period of this policy, if earlier. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.

This provision takes effect on this ------ day of ----------, 19--.

[s] ADMINISTRATOR OF VETERANS AFFAIRS.

7. A new § 8.99a is added to read as follows:

§ 8.99a *Premium rates for the total disability income provision authorized by Public Law 85-678, effective November 1, 1958.* The premium rates for the total disability income provision authorized by Public Law 85-678 are published in Veterans Admnistration Pamphlets 90-5A and 90-12.

8. In § 8.103, paragraph (b) is amended to read as follows:

§ 8.103 *Crediting of premiums to and payment of benefits from the Service-Disabled Veterans' Insurance Fund and the Veterans' Special Term Insurance Fund.* * * *

(b) All premiums and other collections for insurance issued under the provisions of section 621 of the National Service Life Insurance Act and any total disability income provision added thereto, shall be credited directly to a fund in the Treasury of the United States to be known as the Veterans' Special Term Insurance Fund and any payments on such insurance and any total disability income provision added thereto shall be made directly from such fund.

(Sec. 608, 54 Stat. 1012, as amended, sec. 210, 71 Stat. 91; 38 U. S. C. 808, 2210. Interpret or apply sec. 602, 54 Stat. 1009, as amended, 72 Stat. 630; 38 U. S. C. 802)

This regulation is effective November 1, 1958.

[SEAL] ROBERT J. LAMPHERE,
Acting Deputy Administrator.

[F. R. Doc. 58-9086; Filed, Oct. 31, 1958; 8:51 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 780—AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS

SUBPART E—GENERAL, AND PROCESSING AGRICULTURAL COMMODITIES

COMPRESSING OF COTTON

Correction

In Federal Register Document 58-8760, appearing at page 8119 in the issue for Wednesday, October 22, 1958, § 780.53 (a) (1) should read:

§ 780.53 *Compressing of cotton under section 7 (c)—(a) Introductory statement.* * * * (1) Those who are actually engaged in the named operations, and * * *."

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 94]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedures appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

NOTE: Where the general classification (L/MFR, ADF, VOR, TerVOR, VOR/DME, ILS, or RADAR), location, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is cancelled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

Part 609 is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100 (a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Garden City VOR	GCK-LFR	Direct	4000	T-dn	200-1	200-1	200-½
				C-d	400-1	500-1	500-1½
				C-n	400-1½	500-1½	500-2
				S-d-12	400-1	500-1	500-1½
				A-dn	800-2	800-2	800-2

Procedure turn W side N crs, 348° Outbnd, 168° Inbnd, 4000' within 10 miles.
Minimum altitude over facility on final approach crs, 3500'.
Crs and distance, facility to airport, 133—6.5.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.5 miles make right turn, climb to 4700' on S crs GCK LFR within 20 miles.
NOTE: Night operation authorized N-S runway only.

City, Garden City; State, Kans.; Airport Name, New Garden City; Elev., 2895'; Fac. Class, SBRAZ; Ident., GCK; Procedure No. 1, Amdt. 9; Eff. Date, 22 Nov. 58; Sup. Amdt. No. 8; Dated, 22 Dec. 56

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

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
BPT LFR	LOM	Direct	1400	T-dn	300-1	300-f	200-½
BPT VOR	LOM	Direct	1400	C-dn	400-1	500-1	500-1½
Mitchell Int	LOM (Final)	Direct	800	S-dn-11	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn S side NW crs, 293° Outbnd, 113° Inbnd, 1400' within 10 mi. Beyond 10 mi NA.
Minimum altitude over LOM on final approach crs, 800'.
Crs and distance, LOM to airport, 113°—4.8 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.8 mi after passing LOM, climb to 1400' on crs of 113° within 20 miles or, when directed by ATC, (1) turn left and climb to 1400' on E crs BPT LFR, or (2) turn right, climb to 1400' on S crs BPT LFR within 20 miles.

City, Beaumont; State, Tex.; Airport Name, Jefferson County; Elev., 15'; Fac. Class, LOM; Ident., BP; Procedure No. 1, Amdt, 1; Eff. Date, 22 Nov. 58; Sup. Amdt. No. Orig. (ADF portion of Comb. ILS-ADF); Dated, 26 Jan. 57

Lafayette VOR	LFT-MH	Direct	1200	T-dn*	300-1	300-1	200-½
				C-dn	700-1	700-1	700-1½
				A-dn	800-2	800-2	800-2

*500-1 required for takeoffs on Runway 28.
Procedure turn E side of crs, 180° Outbnd, 360° Inbnd, 1200' within 10 mi. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 700'.
Facility on airport.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mi climb to 1300' on crs of 360° within 10 mi.
CAUTION: 404' TV Tower 3.0 mi WNW airport.

City, Lafayette; State, La.; Airport Name, Lafayette; Elev., 41'; Fac. Class, MH; Ident. LFT; Procedure No. 1, Amdt. 1; Eff. Date, 22 Nov. 58; Sup. Amdt. No. Orig.; Dated, 14 June 58

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100 (c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	300-1	300-1	NA
				C-d	500-1	500-1	NA
				C-n	500-1½	500-1½	NA
				S-dn-5	400-1	400-1	NA
				A-dn	800-2	800-2	NA

Procedure turn S side of crs, 205° Outbnd, 025° Inbnd, 2800' within 10 miles.
Minimum altitude over facility on final approach crs, 2100'.
Crs and distance, facility to airport, 025°—3.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.4 miles, make a right climbing turn and return to London VOR at 2800'.

City, London; State, Ky.; Airport Name, London; Elev., 1189'; Fac. Class, BVOR; Procedure No. 1, Amdt. 1; Eff. Date, 12 Sept. 58; Sup. Amdt. No. Orig.; Dated, 12 Sept. 58

Los Angeles Rbn	LAX-VOR	Direct	1500	T-dn	300-1	300-1	200-½
Hollywood Hills FM	LAX-VOR	Direct	3000	C-dn	500-1	600-1	600-1½
6 Nautical mi from LAX VOR on R 250 as reported by LAX Radar or by DME fix.	LAX-VOR (Final)	Direct	600	S-dn-7R-L	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Radar vectoring to final approach crs authorized.
Procedure turn S side of crs, 250° Outbnd, 070° Inbnd, 1500' within 5 miles.
Minimum altitude over facility on final approach crs, 600'.
Crs and distance, facility to airport, 070—1.2.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1.2 miles, climb to 2000' on LAX R-074, no further East than Downey FM-RBn.

City, Los Angeles; State, Calif.; Airport Name, International; Elev., 126'; Fac. Class, BVOR; Ident., LAX; Procedure No. 1, Amdt. 4; Eff. Date, 22 Nov. 58; Sup. Amdt. No. 3; Dated, 25 Jan. 58

PUB LFR	PUB-VOR	Direct	6600	T-dn*	300-1	300-1	200-½
COS LOM	PUB-VOR	Direct	7000	C-d	600-1	600-1	600-1½
ELL RBn	PUB-VOR	Direct	7500	C-n	600-1	600-2	600-2
HNR RBn	PUB-VOR	Direct	7000	S-dn-26	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*Takeoff below 300-1 not authorized on Runways 26 and 35.
Procedure turn S side of crs, 067° Outbnd, 247° Inbnd, 6000' within 10 miles.
Minimum altitude over facility on final approach crs, 5400'.
Crs and distance, facility to airport, 247—2.4.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.4 miles, make left climbing turn to 135° heading, intercept R-160 PUB VOR climbing to 7000' Outbound on R-160 within 10 miles or, when directed by ATC, make left climbing turn, return to PUB VOR, continue climb to 6500' on R-349 PUB within 15 miles.

City, Pueblo; State, Colo.; Airport Name, Pueblo Memorial; Elev. 4725'; Fac. Class, BVOR; Ident., PUB; Procedure No. 1, Amdt. 5; Eff. Date, 22 Nov. 58; Sup. Amdt. No. 4; Dated, 19 July 58

SHR-LFR	SHR-VOR	Direct	6000	T-d	400-1	400-1	400-1
				T-n	400-2	400-2	400-2
				C-d	800-1	800-1	800-1½
				C-n	800-2	800-2	800-2
				S-dn-13	600-1	600-1	600-1
				A-dn	800-2	800-2	800-2

Procedure turn N side of crs, 302° Outbnd, 122° Inbnd, 7000' within 10 mi. NA beyond 10 mi.
Minimum altitude over facility on final approach crs, 5500'.
Crs and distance, facility to airport, 122—4.9.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 mi of VOR, climb to 7500' on R-121 within 20 mi.
CAUTION: High terrain south and west. Also, 5400' terrain approximately 12 mi northwest. Do not descend to final approach altitude until within 10 mi of VOR.
NOTE: All turns to be made on north side of course; high terrain to the south.

City, Sheridan; State, Wyo.; Airport Name, Sheridan County; Elev., 4021'; Fac. Class, BVOR; Ident., SHR; Procedure No. 1, Amdt. 1; Eff. Date, 22 Nov. 58; Sup. Amdt. No. Orig.; Dated, 25 Oct. 58

4. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine more than 65 knots
					65 knots or less	More than 65 knots	
Morton Int**	ORD-VOR	Direct	2000	T-dn	300-1	300-1	200-½
Dundee Int	ORD-VOR	Direct	2500	C-dn	500-1	500-1	500-1½
Midway LOM	ORD-VOR	Direct	2000	S-dn-14L	400-1	400-1	400-1
Glenview LFR	ORD-VOR	Direct	2000	A-dn	800-2	800-2	800-2
Int R-338 API and R-255 ORD	ORD-VOR	Direct	2500				
Northbrook VOR	ORD-VOR	Direct	2000				

**R-075 ORD and R-340 CGT.

Radar transition to final approach course authorized. Aircraft will be released for final approach without procedure turn on inbound final approach crs at least 3 mi from inbound fix. Refer to O'Hare radar procedure if detailed information on sector altitudes is desired.

Procedure turn West side of crs, 322° Outbnd, 142° Inbnd, 2500′ within 10 mi.

Minimum altitude over *Arlington Int or 6.0 mi Radar fix, 2500′.

Crs and distance, *Arlington Int or 6.0 mi radar fix to airport, 142°—6.0 mi.

*Int 260° brng ORD-LOM and R-322 ORD-VOR or R-322 ORD and R-196 OBK.

Crs and distance, breakoff point to approach end of Runway 14L, 138°—0.53 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, make immediate left turn, climb to 2500′ or higher altitude specified by ATC, and proceed to Northbrook VOR via R-030 ORD and R-135 OBK or, when directed by ATC, (1) Make immediate left turn, climb to 3500′, proceed to Morton Int via R-075 ORD; (2) Make immediate left turn, climb to 2500′, proceed to NBU LFR via 030° crs and SE crs NBU LFR.

MAJOR CHANGE: Adds missed approach.

City, Chicago; State, Ill.; Airport Name, O'Hare International; Elev., 666′; Fac. Class, TVOR; Ident., ORD; Procedure No. TerVOR-14L, Amdt. 1; Eff. Date, 8 Nov. 58; Sup. Amdt. No. Orig.; Dated, 8 Nov. 58

FWA-LFR	FWA-VOR	Direct	2200	T-dn	300-1	300-1	200-½
				C-dn	600-1	600-1	600-1½
				S-dn-13	600-1	600-1	600-1
				A-dn	800-2	800-2	800-2
				If Wayne Int received, following minimums apply:*			
				S-dn-13	400-1	400-1	400-1
				C-dn	400-1	500-1	500-1½

*Lower minimums authorized only for aircraft equipped to receive Wayne Int.#

#Wayne Int: Int FWA R-320 and Brg 187° to FWA-LFR.

Procedure turn West side of crs, 320° Outbnd, 140° Inbnd, 2200′ within 10 mi.

Minimum altitude over facility on final approach crs, *1400′.

Facility on airport.

Crs and distance, breakoff point to app end of Runy 13, 135°—0.8 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mi, climb to 2200′ on R-140 within 20 miles or, when directed by ATC, make right climbing turn, climb to 2200′ and return to FWA-VOR.

CAUTION: Tower 1649′ MSL located 7 mi North of airport. Tower 1172′ MSL located 7½ miles West of airport. Sectional charts list other towers in vicinity.

City, Fort Wayne; State, Ind.; Airport Name, Baer Field; Elev., 801′; Fac. Class, BVOR; Ident., FWA; Procedure No. TerVOR-13, Amdt. 1; Eff. Date, 20 Sept. 58; Sup. Amdt. No. Orig.; Dated, 20 Sept. 58

FWA-LFR	FWA-VOR	Direct	2200	T-dn	300-1	300-1	200-½
				C-dn	600-1	600-1	600-1½
				S-dn-4	600-1	600-1	600-1
				A-dn	800-2	800-2	800-2
				After passing FWA-LFR, landing minimums are:*			
				C-dn	400-1	500-1	500-1½
				S-dn-4	400-1	400-1	400-1

Procedure turn South side of crs, 229° Outbnd, 049° Inbnd, 2000′ within 10 mi.

Minimum altitude over facility on final approach crs, *1400′.

Facility on airport.

Crs and distance, breakoff point to approach end of Runway 4, 046°—0.9 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 miles, climb to 2200′ on R-049 within 20 miles or, when directed by ATC, make right climbing turn to 2200′ and return to FWA-VOR.

CAUTION: Tower 1649′ MSL located 7 mi North of airport. Tower 1172′ MSL located 7½ mi West of airport. Sectional charts list other towers in vicinity.

City, Fort Wayne; State, Ind.; Airport Name, Baer Field; Elev., 801′; Fac. Class, BVOR; Ident., FWA; Procedure No. TerVOR-4; Amdt., 1; Eff. Date, 20 Sept. 58; Sup. Amdt. No. Orig.; Dated, 20 Sept. 58

5. The very high frequency omnirange-distance measuring equipment (VOR/DME) procedures prescribed in § 609.300 are amended to read in part:

VOR-DME STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	

PROCEDURE CANCELLED, EFFECTIVE 22 NOVEMBER 1958.

City, Fort Lauderdale; State, Fla.; Airport Name, Broward County; Elev., 10′; Fac. Class, BVOR-DME; Ident., MIA; Procedure No. VOR-DME-22, Amdt. 1; Eff. Date, 14 Dec. 57; Sup. Amdt. No. 1; Dated, 10 Mar. 56

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

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

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

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

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Beaumont LFR	LOM	Direct	1400	T-dn	300-1	300-1	200-½
Beaumont VOR	LOM	Direct	1400	C-dn	400-1	500-1	500-1¼
Marsh Int	LOM	Direct	1400	S-dn-11	200-½	200-½	200-½
Mitchell Int	LOM (Final)	Direct	1400	A-dn	600-2	600-2	600-2

Procedure turn S side NW crs 293° Outbnd, 113° Inbnd, 1400' within 10 mi. Beyond 10 mi. NA.
Minimum altitude at glide slope int inbnd, 1400'.
Alt. of O. S. and dist. to approach end of Rwy at OM 1400'—4.8 mi; at MM 215'—0.4.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 1400' on SE crs ILS within 20 mi or, when directed by ATC, (1) Turn left, climb to 1400' on R-067 BPT VOR, or (2) turn right, climb to 1400' on S crs BPT LFR within 20 miles.
CAUTION: 30' AGL power line poles cross clear zone approximately 800' from MM inbnd.

City, Beaumont; State, Tex.; Airport Name, Jefferson County; Elev., 15'; Fac. Class, ILS; Ident., I-BPT; Procedure No. ILS-11, Amdt. 1; Eff. Date, 22 Nov. 58; Sup. Amdt. No. Orig. (ILS portion of Comb ILS-ADF); Dated, 26 Jan. 57

RDU LOM	Leesville LF Int*	Direct	2000	T-dn	300-1	300-1	200-½
RDU LFR	Leesville LF Int*	Direct	1700	C-dn	400-1	500-1	500-1¼
				S-dn-23	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*Int N crs RDU-ILS and 360° brg RDU-LFR.
Procedure turn N side of crs 049° outbnd, 229° inbnd, 1500' within 10 mi of Leesville LF Int.
No glide slope—altitude over Leesville Int on final approach crs, 1000'.
Crs and distance, Leesville Int to approach end Runway 23, 229°—4.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.4 mi of Leesville Int, climb to 2000' on SW crs ILS (229) within 20 mi. When directed by ATC, turn right, climb to 2000' on NW crs RDU LFR (308), or on R-303 RDU, within 20 mi.
NOTE: This procedure authorized only for aircraft equipped to receive ILS and LFR simultaneously.

City, Raleigh; State, N. C.; Airport Name, Raleigh-Durham; Elev., 433'; Fac. Class, ILS; Ident., I-RDU; Procedure No. ILS-23, Amdt. 3; Eff. Date, 22 Nov. 58; Sup. Amdt. No. 2; Dated, 14 June 58

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

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL]

WILLIAM B. DAVIS,
Acting Administrator of Civil Aeronautics.

OCTOBER 27, 1958.

[F. R. Doc. 58-9064; Filed, Oct. 31, 1958; 8:46 a. m.]

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

[CGFR 58-40]

ENFORCEMENT OF NAVIGATION AND VESSEL INSPECTION LAWS AND PROCEDURES FOLLOWED

The increased use of the navigable waters of the United States for recreational purposes prompted Congress to pass legislation to provide means for meeting the current needs for greater safety in boating activities. The act of April 25, 1940, as amended (46 U. S. C. 526–526t), was further amended and the changes, effective immediately, are as follows:

(1) The operator of a vessel shall stop and render assistance if involved in a boating accident and shall furnish his identification to others involved.

(2) The Coast Guard is authorized to impose civil penalties for reckless or negligent operation of vessels, including pleasure craft of all types.

It is the policy of the Commandant, U. S. Coast Guard, to publicize major changes in safety laws so that persons affected will be apprised of the requirements. The procedures governing the enforcement and administration of the maritime safety and navigation and vessel inspection laws are continued in effect. The amendments to the regulations contained in this document are procedural requirements, references or quotations of law currently in effect, or appropriate cross references to procedures or applicable requirements. It is hereby found that compliance with the Administrative Procedure Act, respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof, is unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F. R. 6521), 167-9, dated August 3, 1954 (19 F. R. 5915), 167-14, dated November 26, 1954 (19 F. R. 8026), 167-20, dated June 18, 1956 (21 F. R. 4894), CGFR 56-28, dated July 24, 1956 (21 F. R. 5659), and 167-32, dated September 23, 1958 (23 F. R. 7605), to promulgate regulations in accordance with the statutes cited with the regulations below, the following amendments and regulations are prescribed and shall become effective upon the date of publication of this document in the FEDERAL REGISTER:

Subchapter A—Procedures Applicable to the Public

PART 2—VESSEL INSPECTIONS

SUBPART 2.50—NAVIGATION AND VESSEL INSPECTION LAWS

Section 2.50-20 (c) is amended to read as follows:

§ 2.50-20 *Reports and assessments of penalties for violation of laws or regulations.* * * *

(c) The offender will be given instructions for making an appeal to the Commandant from the actions of the Coast Guard District Commander.

(R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply E O. 10402, 17 F. R. 9917; 3 CFR 1952 Supp.)

Subchapter C—Uninspected Vessels

PART 26—OPERATIONS

SUBPART 26.03—SPECIAL OPERATING REQUIREMENTS

1. Part 26 is amended by adding a new subpart entitled "Subpart 26.03—Special Operating Requirements" consisting of

§§ 26.03–1 and 26.03–5, which read as follows:

§ 26.03–1 *Reckless or negligent operation prohibited by law.* Subsection 13 (a) of the Act of April 25, 1940, as amended (46 U. S. C. 526*l*), reads as follows:

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use a motorboat or a vessel.

§ 26.03–5 *Action required after accident.* (a) Whenever an undocumented vessel is involved in a collision, accident, or other casualty, the operator shall:

(1) Comply with requirements in subsection 13 (b) of the Act of April 25, 1940, as amended (46 U. S. C. 526*l*), which reads as follows:

In the case of collision, accident, or other casualty involving a motorboat or other vessel subject to this Act, it shall be the duty of the operator, if and so far as he can do so without serious danger to his own vessel, or persons aboard, to render such assistance as may be practicable and necessary to other persons affected by the collision, accident, or other casualty in order to save them from danger caused by the collision, accident, or casualty. He shall also give his name, address, and identification of his vessel to any person injured and to the owner of any property damaged. The duties imposed by this subsection shall be in addition to any duties otherwise provided by law.

(R. S. 4405, as amended, 4462, as amended, sec. 17, 54 Stat. 166, as amended, 46 U. S. C. 375, 416, 526p)

SUBPART 26.05—PENALTIES

2. Section 26.05–1 is amended to read as follows:

§ 26.05–1 *General.* (a) If any motorboat or motor vessel subject to any of the provisions of the Motorboat Act of April 25, 1940, as amended (54 Stat. 163–167; 46 U. S. C. 526–526t), is operated or navigated in violation of said Act or any of the applicable regulations in this chapter, the owner or operator, either one or both of them, is subject to the penalty in section 16, as amended (46 U. S. C. 526o), which reads as follows:

If any motorboat or vessel subject to any of the provisions of this Act is operated or navigated in violation of this Act or any regulation issued thereunder, the owner or operator, either one or both of them, shall, in addition to any other penalty prescribed by law, be liable to a penalty of $100: *Provided*, That in the case of motorboats or vessels subject to the provisions of this Act carrying passengers for hire, a penalty of $200 shall be imposed on the owner or operator, either one or both of them, thereof for any violation of section 6, 7, or 8 of this Act or of any regulations pertaining thereto. For any penalty incurred under this section the motorboat or vessel shall be held liable and may be proceeded against by way of libel in the district court of any district in which said motorboat or vessel may be found.

(R. S. 4405, as amended, 4462, as amended, sec. 17, 54 Stat. 166, as amended, 46 U. S. C. 375, 416, 526p)

SUBPART 26.10—ASSESSMENT, COLLECTION, MITIGATION, AND REMISSION OF FINES OR PENALTIES

3. The title for Subpart 26.10 is amended to read as set forth above.

4. Section 26.10–1 is amended to read as follows:

§ 26.10–1 *General.* (a) The assessment, collection, mitigation, and remission of any fine, penalty, or forfeiture incurred under the Act of April 25, 1940, as amended, are authorized by section 17 (46 U. S. C. 526p), which reads in part as follows:

* * * The Commandant of the Coast Guard or any officer of the Coast Guard authorized by the Commandant may, upon application therefor, remit or mitigate any fine, penalty or forfeiture incurred under this Act or any regulations thereunder relating to motorboats or vessels, except the penalties provided in section 14 hereunder. * * *

(b) The assessment, collection, mitigation, and remission of penalties incurred under the Federal Boating Act of 1958 are authorized by subsection 8 (b), which reads as follows:

The Secretary may assess and collect any penalty incurred under this Act or any regulations prescribed pursuant to section 7 of this Act. The Secretary may, in his discretion, remit or mitigate any penalty imposed under this section, or discontinue prosecution therefor on such terms as he may deem proper.

5. Subpart 26.10 is amended by adding a new section reading as follows:

§ 26.10–5 *Procedures.* (a) Violations of maritime safety, navigation and vessel inspection laws, as well as rules and regulations prescribed thereunder, administered and enforced by the Coast Guard are reported by Coast Guard personnel detecting such violations to the Commander of the Coast Guard district in which the alleged violations occurred. The alleged offender will be informed of the nature of the violation.

(b) The procedures for the assessment, collection, remission, or mitigation are set forth in §§ 2.50–20 to 2.50–30 of this chapter.

(R. S. 4405, as amended, 4462, as amended, sec. 17, 54 Stat. 166, as amended, 46 U. S. C. 375, 416, 526p)

Subchapter D—Tank Vessels

PART 35—OPERATIONS

SUBPART 35.01—SPECIAL OPERATING REQUIREMENTS

Subpart 35.01 is amended by adding a new section at the end thereof, reading as follows:

§ 35.01–30 *Reckless or negligent operation prohibited by law—TB/ALL.* (a) Subsection 13 (a) of the Act of April 25, 1940, as amended (46 U. S. C. 526*l*), reads as follows:

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use a motorboat or a vessel.

(R. S. 4405, as amended, 4417a, as amended, 4462, as amended; 46 U. S. C. 375, 391a, 416. Interpret or apply sec. 17, 54 Stat. 166, as amended, sec. 2, 54 Stat. 1028, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 526p, 463a, 50 U. S. C. 198)

Subchapter H—Passenger Vessels

PART 78—OPERATIONS

SUBPART 78.30—LOOKOUTS, PILOTHOUSE WATCH, PATROLMEN, AND WATCHMEN

Subpart 78.30 is amended by adding a new section at the end thereof, reading as follows:

§ 78.30–30 *Reckless or negligent operation prohibited by law.* (a) Subsection 13 (a) of the Act of April 25, 1940 (46 U. S. C. 526*l*), reads as follows:

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use a motorboat or a vessel.

(R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4417, 4418, 4426, 4453, as amended, secs. 1, 2, 49 Stat. 1544, sec. 17, 54 Stat. 166, sec. 3, 54 Stat. 346, as amended, sec. 3, 68 Stat. 675, 46 U. S. C. 391, 392, 404, 435, 367, 1333, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.)

Subchapter I—Cargo and Miscellaneous Vessels

PART 97—OPERATIONS

SUBPART 97.27—LOOKOUTS

Subpart 97.27 is amended by adding a new section at the end thereof, reading as follows:

§ 97.27–10 *Reckless or negligent operation prohibited by law.* (a) Subsection 13 (a) of the act of April 25, 1940 (46 U. S. C. 526*l*), reads as follows:

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use a motorboat or a vessel.

(R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4417, 4418, 4426, 4453, as amended, secs. 1, 2, 49 Stat. 1544, sec. 17, 54 Stat. 166, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 391, 392, 404, 435, 367, 526p, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.)

Subchapter R—Nautical Schools

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

SUBPART 167.65—SPECIAL OPERATING REQUIREMENTS

Subpart 167.65 is amended by adding a new § 167.65–3 to follow § 167.65–1, and this new section reads as follows:

§ 167.65–3 *Reckless or negligent operation prohibited by law.* (a) Subsection 13 (a) of the Act of April 25, 1940 (46 U. S. C. 526*l*), reads as follows:

No person shall operate any motorboat or any vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use a motorboat or a vessel.

(R. S. 4417, as amended, 4418, as amended, 4426, as amended, 4428–4434, as amended, 4450, as amended, 4488, as amended, 4491, as amended, 41 Stat. 305, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, secs. 1–21, 2, 54 Stat. 163–167, as amended, 1028, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 391, 392, 404, 406–412, 239, 481, 489, 363, 367,

526–526t, 463a, 50 U. S. C. 198, E. O. 10402, 17 F. R. 9917, 3 CFR, 1952 Supp.)

Dated: October 28, 1958.

[SEAL] J. A. HIRSHFIELD,
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 58-9078; Filed, Oct. 31, 1958; 8:49 a. m.]

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

Subchapter G—Emergency Operations

[General Order 82]

PART 309—WAR RISK INSURANCE VALUES

The following new part is hereby added to Chapter II of this title:

FINDINGS AND SCOPE

Sec.
309.1 Findings.
309.2 Scope.

BASIC INSURANCE VALUES

309.3 Vessels built during or after 1935.
309.4 Vessels built during the period 1917–1934.

GENERAL PROVISIONS

309.5 Adjustments.
309.6 Definitions.
309.7 Modifications.
309.8 Vessel data forms.

AUTHORITY: §§ 309.1 to 309.8 issued under sec. 204, 49 Stat. 1987, as amended, sec. 1209, 64 Stat. 775, as amended, 46 U. S. C. 1114, 1289.

FINDINGS AND SCOPE

§ 309.1 *Findings.* The Maritime Administrator has found that the insurance values provided in this part constitute just compensation for the vessels to which they apply, computed in accordance with subsection 902 (a) of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1242), as that subsection is interpreted by the General Accounting Office in the Comptroller General's decision B–107600 dated February 11, 1952, as modified by decision B–107600 dated March 31, 1955, pursuant to the Department of Commerce and Related Agencies Appropriation Act, 1959, Public Law 85–469, 85th Congress, 72 Stat. 226, 229; and section 1209 (a), Merchant Marine Act, 1936, as amended (46 U. S. C. 1289 (a)), Public Law 958, 84th Congress, and the authority delegated to the Maritime Administrator by the Secretary of Commerce in section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (Amended) (18 F. R. 5518, September 15, 1953).

§ 309.2 *Scope*—(a) *Vessels included.* This part establishes insurance values for self-propelled ocean-going iron and steel vessels (other than vessels excluded pursuant to paragraph (b) of this section) for which war risk hull insurance is provided by the Maritime Administrator pursuant to Title XII, Merchant Marine Act, 1936, as amended (46 U. S. C. 1281–1294), Public Law 763, 81st Congress, Public Law 209, 84th Congress, Public Law 958, 84th Congress. The insurance values established by this part represent the maximum amounts for which the Maritime Administrator will provide war risk hull insurance and for which claims for damage to or actual or constructive total loss of such insured vessels may be adjusted, compromised, settled, adjudged, or paid, by the Maritime Administrator with respect to insurance attaching on or after July 1, 1958, under the Standard Forms of War Risk Hull Insurance Interim Binder or Policy prescribed by §§ 308.106 and 308.107 of this chapter (General Order 75 (Revised), 22 F. R. 1175, February 28, 1957). Revised insurance values will be prescribed in subsequent revisions of this part, which are expected to be issued at least every six months. The latest published values will remain in effect until new ones are published.

(b) *Vessels excluded.* The insurance values established pursuant to this part do not apply to passenger vessels, lumber schooners, car ferries, seatrains, cable ships, bulk cement and ore carriers other than colliers built prior to 1935, vessels operated on the Great Lakes and inland waterways, fully refrigerated vessels, vessels of less than 1,500 gross tons, or any other vessels or class of vessels to which the Maritime Administrator finds that the provisions of this part would not be appropriate. Values for vessels exempted from this part shall be specially determined by the Maritime Administrator and published as appendixes to this part.

(c) *Fuel, stores, and supplies.* Values for fuel, stores and supplies will be prescribed at a later date.

BASIC INSURANCE VALUES

§ 309.3 *Vessels built during or after 1935*—(a) *Basic values.* The insurance values of vessels built during or after 1935 shall be determined in accordance with this section, subject to the applicable adjustments provided in § 309.5.

(b) *War-built vessels.* (1) The insurance values of the standard types of war-built vessels listed herein sold by the United States under the Merchant Ship Sales Act of 1946 (which the Administrator has determined represent the domestic market values) are as follows:

Standard-type vessel:	*Insurance value*
EC2	$350,000
EC2–S–AW1	550,000
VC2–S–AP2	810,000
C1–MT–BU1	275,000
C1–M–AV1	450,000
C1	555,000
C2	920,000
C3	1,175,000
C4	1,100,000
Z–ET1–S–C3	150,000
T1–M–BT	435,000
T2–SE–A1	600,000
T3–S–A1	650,000
T3–S–BZ1	1,190,000
R1–M–AV3	525,000

(2) The insurance values of the standard subtypes of war-built vessels listed herein sold by the United States under the Merchant Ship Sales Act of 1946 shall be determined by multiplying the insurance value of the standard type vessel listed above by the factor shown opposite the subtype in the following table:

Subtype:	*Factor*
EC2–S–C1	100%—EC2.
VC2–S–AP4	100%—VC2–S–AP2.
VC2–S–AP3	100%—VC2–S–AP2.
C1–ME–AV6	100%—C1–M–AV1.
C1–M–AV8	100%—C1–M–AV1.
C1–A	100%—C1.
C1–B	100%—C1.
C2–S–A1	108%—C2.
C2–S–AJ1	100%—C2.
C2–S–B1	100%—C2.
C2–S–E1	100%—C2.
C2–F	108%—C2.
C2–S	112%—C2.
C2–SU	118%—C2.
C2–T	100%—C2.
C3–Cargo	100%—C3.
C3–S–BH2	124%—C3.
C3–M	100%—C3.
C3–S–A1	100%—C3.
C3–S–A2	100%—C3.
C3–S–A3	93%—C3.
C3–S–A4	126%—C3.
C3–S–A5	126%—C3.
C3–E	93%—C3.
C4–S–A4	100%—C4.
C4–S–B5	100%—C4.
T1–M–BT1	100%—T1–M–BT.
T1–M–BT2	100%—T1–M–BT.
T2–SE–A2	100%—T2–SE–A1.
T2–SE–A3	100%—T2–SE–A1.

(c) *Other vessels.* The insurance value of a vessel built during or after 1935 which is not included in paragraph (b) of this section shall be the current domestic market value as determined by the Maritime Administrator.

§ 309.4 *Vessels built during the period 1917–1934.* The basic insurance values of vessels built during the period 1917–1934 (both inclusive) shall be as follows, subject to applicable adjustments provided in § 309.5:

(a) For dry cargo vessels, $12.00 per deadweight ton for a vessel built during 1934. For vessels built prior to 1934 and after 1929 this value shall be reduced by $1.00 per deadweight ton for each year of the vessel's age prior to 1935 (not counting the year in which the vessel was built). For a vessel built 1929–1917 the value shall be $7.00 per deadweight ton;

(b) For tank vessels, $11.00 per deadweight ton for a vessel built during 1934. For vessels built prior to 1934 and after 1931 this value shall be reduced by $1.50 per deadweight ton for each year of the vessel's age prior to 1935 (not counting the year in which the vessel was built). For a vessel built 1931–1917 the value shall be $6.50 per deadweight ton;

(c) For collier vessels, $12.00 per deadweight ton for a vessel built during 1934. For vessels built prior to 1934 and after 1929 this value shall be reduced by $1.00 per deadweight ton for each year of the vessel's age prior to 1935 (not counting the year in which the vessel was built). For a vessel built 1929–1917 the value shall be $7.00 per deadweight ton.

GENERAL PROVISIONS

§ 309.5 *Adjustments for condition, equipment and other considerations.* The basic insurance values provided in § 309.3 shall be adjusted for individual vessels to the extent provided in paragraphs (a) to (d) of this section. The basic insurance values provided in § 309.4 shall be adjusted for individual vessels to the extent provided in paragraphs (a) to (f) of this section.

(a) *Adjustment for a vessel of substandard condition.* If the Maritime Administrator is of the opinion that a vessel is not in class or is in substandard condition for a vessel of her type or subtype and age, there shall be subtracted from the basic insurance value of such vessel, as determined pursuant to §§ 309.3 and 309.4, the amount estimated by the Administrator as the cost of putting the vessel in class or the amount estimated by the Administrator as the difference in value of the substandard vessel and a vessel in standard condition.

(b) *Special equipment.* For any special equipment of material utility in the handling of cargo or utilization of the vessel, not otherwise included in determining the basic insurance value pursuant to § 309.3 or § 309.4, if the depreciated reproduction cost less construction subsidy, if any, of such special equipment is in excess of $50,000.00, an allowance in such amount as the Maritime Administrator shall determine to be the fair and reasonable value of such equipment less construction-differential subsidy thereon, shall be added to the basic insurance value.

(c) *Government installations.* The insurance values provided by this part shall not include any allowance for any special installations or equipment to the extent that their cost was borne by the United States.

(d) *Construction subsidized vessel.* In the case of a construction subsidized vessel, for the period of insurance prior to requisition for title or use the valuation determined in accordance with § 309.3 shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use the valuation determined in accordance with § 309.3 shall not exceed the amount which would be payable under section 802 of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1211), in the case of requisition for title or use.

(e) *Speed.* The basic insurance values determined pursuant to § 309.4 for vessels built during the period 1917–34 (both inclusive) shall be adjusted as provided in subparagraph (1) or (2) of this paragraph.

(1) *Allowance for speed of more than 11 knots.* For vessels having a speed of more than 11 knots, there shall be added to the basic values provided in § 309.4, $0.75 per deadweight ton for each knot or fraction thereof in excess of 11 knots.

(2) *Deduction for speeds of less than 9 knots.* For vessels having a speed of less than 9 knots, $1.00 per deadweight ton shall be deducted from the basic values provided in § 309.4.

(f) *Refrigeration.* (1) The basic insurance values determined pursuant to § 309.4 shall be adjusted for refrigerated space as provided in this paragraph, subject to the limitation provided in paragraph (c) of this section.

(2) The net cubic capacity of each separately insulated refrigerated compartment of the vessel, exclusive of any refrigerated space ordinarily required for vessel's stores, shall be computed, and the total cubic capacity of all such compartments shall then be ascertained.

(3) The number of net cubic feet of the sum of all refrigerated compartments of the vessel, exclusive of the refrigerated space ordinarily required for the vessel's stores, shall then be multiplied by $1.00 for a vessel built during 1934. For vessels built prior to 1934 and after 1929 this value shall be reduced by $0.20 per net cubic foot of insulated refrigerated cargo space for each year of the vessel's age prior to 1934. For vessels built 1929–1917 the value shall be $0.05 per net cubic foot of insulated refrigerated cargo space.

§ 309.6 *Definitions*—(a) *Date vessel is built.* The date a vessel is built is the date upon which the vessel is delivered by the shipbuilder.

(b) *Deadweight tonnage.* The deadweight tonnage of a vessel means her deadweight capacity established in accordance with normal Summer Freeboard as assigned pursuant to the International Load Line Convention, 1930, and shall be her capacity (in tons of 2,240 pounds) for cargo, fuel, fresh water, spare parts and stores, but exclusive of permanent ballast.

(c) *Speed of vessel.* The speed of a vessel means the speed determined in accordance with the formulae provided in Part 246 of this chapter (General Order 43, 2d Revision, 22 F. R. 8120, October 12, 1957).

(d) *Passenger vessel.* A passenger vessel is a ship which carries more than twelve passengers.

§ 309.7 *Modifications.* The Maritime Administrator reserves the right to exempt specific vessels from the scope of this part, or to amend, modify, or terminate the provisions hereof.

§ 309.8 *Vessel data forms*—(a) *To accompany application for insurance.* Each application for war risk hull insurance submitted in accordance with § 308.101 of this chapter (General Order 75 (Revised) 22 F. R. 1175) shall be accompanied by information relating to the vessel for use by the Maritime Administrator in determining the insurance value pursuant to this part. The owner of a vessel for which a war risk hull insurance binder has been issued pursuant to Subpart B of Part 308 of this chapter (General Order 75 (Revised) 22 F. R. 1175) shall provide the Maritime Administrator, Washington 25, D. C., within 60 days from the publication of this part in the FEDERAL REGISTER, with the vessel data required by this section. The information shall be submitted in duplicate on the applicable form prescribed in this section, copies of which may be obtained from the American War Risk Agency, 99 John Street, New York, New York, or the Secretary, Maritime Administration, Washington 25, D. C.

(b) *Vessels of 1,500 gross tons or over*—(1) *War-built vessels.* If the vessel was sold by the United States under the Merchant Ship Sales Act of 1946, vessel data shall be submitted on Form MA-470.

(2) *Section 802 vessels.* If the vessel was built or reconstructed or reconditioned with the aid of a construction-differential subsidy under Title V of the Merchant Marine Act of 1936, as amended (including vessels for which the purchase price was adjusted under section 9 of the Merchant Ship Sales Act of 1946) vessel data shall be submitted on Form MA-471.

(3) *Other vessels built during or after 1935.* If the vessel was built during or after 1935, and if it is not included in subparagraph (1) or (2) of this paragraph, vessel data shall be submitted on Form MA-472.

(4) *Vessels built during the period 1917–1934.* If the vessel is a dry cargo, tank, or collier vessel built during the period 1917–1934 (both inclusive), vessel data shall be submitted on Form MA-473.

(5) *Vessels not included in this part.* If the vessel is 1500 gross tons or more and is excluded from this part by § 309.2 (b), vessel data shall be submitted on Form MA-474.

(c) *Vessels of less than 1500 gross tons.* If the vessel is of less than 1500 gross tons, vessel data shall be submitted on Form MA-63.

Effective date. This part shall become effective on the date of its publication in the FEDERAL REGISTER.

NOTE: The record-keeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Dated: October 27, 1958.

[SEAL] CLARENCE G. MORSE,
Maritime Administrator.

[F. R. Doc. 58-9065; Filed, Oct. 31, 1958; 8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 1742]

[Colorado 012292]

COLORADO

RESERVING LANDS WITHIN ROOSEVELT NATIONAL FOREST FOR USE OF FOREST SERVICE AS ROADSIDE ZONES AND OTHER PUBLIC PURPOSES

Correction

In Federal Register Document 58-8423, appearing at page 7894 in the issue for Saturday, October 11, 1958, the last line of the land description for Road No. 462, Roadside Zone—Brainard Lake Forest Development Road, should read "Sec. 4, N½SE¼, N½SW¼, and S½ NW¼."

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Coast Guard

[46 CFR Parts 26, 136, 170–173]

[CGFR 58-42]

MARITIME SAFETY STANDARDS AND REGULATIONS TO IMPLEMENT FEDERAL BOATING ACT OF 1958

PUBLIC HEARING ON PROPOSED CHANGES

1. The Merchant Marine Council will hold a Public Hearing on Tuesday, December 9, 1958, commencing at 9:30 a. m., in the Department of Commerce Auditorium, 14th Street, NW., between E Street and Constitution Avenue, Washington, D. C., for the purpose of receiving comments, views, and data on the proposed standards and regulations to implement the Federal Boating Act of 1958 as set forth in Items I to III, inclusive, of the Merchant Marine Council Public Hearing Agenda (CG–249), dated December 9, 1958, and in this document.

2. Copies of the Merchant Marine Council Public Hearing Agenda (CG–249) are mailed to persons and organizations who have expressed a continued interest in the subjects under consideration and have requested that copies be furnished them. Copies of the Agenda will be furnished, upon request to the Commandant (CMC), United States Coast Guard, Washington 25, D. C., any Coast Guard District Commander, or any Coast Guard Marine Inspection Office so long as they are available. After the supply of extra copies is exhausted, copies will be available for reading purposes only in Room 4104, Coast Guard Headquarters, or at the Offices of the various Coast Guard District Commanders.

3. Comments on the proposed standards and regulations are invited. Written comments containing constructive criticisms, suggestions, or views are welcomed; however, acknowledgment of the comments received or reasons why the suggested changes were or were not adopted will not be furnished since personnel are not available to handle the necessary correspondence involved. Each person who desires to submit written comments, data, or views in connection with the proposed standards or regulations set forth in the Merchant Marine Council Public Hearing Agenda should submit them so that they will be received prior to December 5, 1958, by the Commandant (CMC), United States Coast Guard Headquarters, Washington 25, D. C. Comments, data, or views may be presented orally or in writing at the hearing before the Merchant Marine Council on December 9, 1958. In order to insure consideration of comments and to facilitate checking and recording, it is essential that each comment regarding a section or paragraph of the proposed standards and regulations shall be submitted on Form CG–3287, showing the section number, the proposed change, the reason or basis, and the name, business, firm or organization (if any), and the address of the submitter. Copies may be obtained upon request from the Commandant (CMC), or from any Coast Guard District Commander, or may be reproduced by typewriter or otherwise.

MERCHANT MARINE COUNCIL PUBLIC HEARINGS

4. It is the policy of the Coast Guard, prior to final adoption of proposed regulations, rules or standards, to obtain the opinions and views of those affected thereby. This is accomplished through public hearings conducted by the Merchant Marine Council, which is an administrative board established by the Commandant of the Coast Guard to advise him on matters affecting maritime safety, shipping, and navigation. These public hearings are informal and administrative in nature. Any person or organization may appear or be represented and, without argument or dispute, may present written or oral opinions with respect to any proposal contained in the Merchant Marine Council Public Hearing Agenda. He may also submit alternative proposals, with reasons therefor, which are designed to accomplish the intended purposes as set forth in the Agenda or eliminate objections thereto. Written and oral comments containing constructive criticisms or suggestions are welcomed, considered and evaluated. If such comments are found to clarify or improve a proposed regulation, rule or standard, the revision is included in the Council's recommendation to the Commandant. Written comments received before or during a public hearing are not usually read at the hearing, but are made a part of the record. After regulations, rules or standards, as revised, are approved by the Commandant, they are published in the FEDERAL REGISTER as required by law.

INTRODUCTION

5. Recreational boating has become a universal family sport in this country, indulged in by persons of all ages, in all circumstances of life, operating all kinds of small boats. The unprecedented boom in the use of small vessels, principally pleasure craft, on the waterways of the nation prompted Congress to pass the Federal Boating Act of 1958. This act modernizes Federal boating laws and provides means for meeting the current needs for greater safety. Briefly, this act provides:

(a) Effective immediately, the operator of a vessel shall stop and render assistance if involved in a boating accident, and shall furnish his identification to others involved. Further, the operator is required to give notice to and file a written report with the cognizant authorities.

(b) The Coast Guard is authorized to impose civil penalties for reckless or negligent operation of vessels, including pleasure craft of all types.

(c) Every State may assume concurrent jurisdiction on navigable waters of the United States within such State and enter into enforcement agreements with the Federal government.

(d) The present Coast Guard system for numbering of undocumented vessels shall be continued until April 1, 1960, unless a State assumes the functions of numbering prior to that date. On and after April 1, 1960, the Coast Guard will re-number all undocumented vessels propelled by machinery of more than 10 horsepower, unless a State shall have assumed the functions of numbering within that State.

(e) The Coast Guard shall compile, analyze and publish information obtained from reports of boating accidents together with the findings concerning the causes of such accidents and recommendations for their future prevention.

(f) The Coast Guard shall establish standards, rules and regulations with respect to some of these functions as described in the law.

6. The Secretary of the Treasury by Treasury Department Orders 120, dated July 31, 1950 (15 F. R. 6521), and 167–32, dated September 23, 1958 (23 F. R. 7605), assigned the functions in the Act of April 25, 1940, as amended (46 U. S. C. 526–526t), and the Federal Boating Act of 1958 to the Commandant of the Coast Guard. Appropriate references to the sections of laws under which the proposed regulations in this document may be prescribed are cited with the regulations below.

7. The proposed standards, rules and regulations required to be prescribed are set forth in this document. For convenience, the proposals are divided into three categories, as follows:

Item I—System of Numbering and Statistical Information Applicable to Undocumented Vessels (46 CFR Parts 170–173).

Item II—Boating Accidents Involving Undocumented Vessels (46 CFR Part 136).

Item III—Boarding Undocumented Vessels (46 CFR Part 26).

8. The proposals in Item I describe the Federal standards for numbering undocumented vessels as well as the requirements for statistical information to be obtained, compiled, analyzed and published.

9. The proposals in Item II are requirements applicable to the operators of vessels involved in boating accidents. It is proposed to require both a notice and a written report about each reportable boating accident, which will be submitted by the operator of the undocumented vessel. These boating accident reports will be a primary source of information on which statistics will be based, as well as a basis for recommendations for promoting safety of life and property and the prevention or elimination of similar accidents in the future.

10. The proposal in Item III describes the procedures to be followed in the enforcement of these laws.

ITEM I—SYSTEM OF NUMBERING AND STATISTICAL INFORMATION APPLICABLE TO UNDOCUMENTED VESSELS

11. It is proposed to amend the title for Subchapter S and to add new Parts 170, 171, and 173, as well as to revise Part 172, so that requirements with respect to numbering and statistical information concerning undocumented vessels will be in one subchapter. The proposals read as follows:

Subchapter S—System of Numbering and Statistical Information Applicable to Undocumented Vessels

PART 170—GENERAL PROVISIONS

SUBPART 170.01—AUTHORITY AND PURPOSE

Sec.
170.01-1 Purpose of regulations.
170.01-5 Assignment of functions.

SUBPART 170.05—APPLICATION

170.05-1 Scope.
170.05-5 Vessels subject to the requirements of this subchapter.

SUBPART 170.10—DEFINITIONS OF TERMS USED IN THIS SUBCHAPTER

170.10-1 Commandant.
170.10-10 Coast Guard District Commander.
170.10-15 Horsepower.
170.10-20 Officer in Charge, Marine Inspection.
170.10-25 Operate.
170.10-27 Operator.
170.10-30 Owner.
170.10-40 State.
170.10-45 Undocumented vessel.
170.10-50 Vessel.

SUBPART 170.15—APPEALS AND JUDICIAL REVIEW

170.15-1 Judicial review or relief.
170.15-5 Right of administrative appeal.
170.15-10 Time limits.
170.15-15 Decision on appeal.
170.15-20 Initial decisions or actions of the Commandant.
170.15-25 Reports and assessments of penalties for violations.

AUTHORITY: §§ 170.01-1 to 170.15-25 issued under secs. 13 (c) and 17, 54 Stat. 166, as amended, sec. 7 (a), 72 Stat. 1757; 46 U. S. C. 526l, 526p.

SUBPART 170.01—AUTHORITY AND PURPOSE

§ 170.01-1 *Purpose of regulations.* The regulations in this subchapter provide:

(a) Standards for numbering under the Federal Boating Act of 1958.

(b) Requirements with respect to statistical information under the Federal Boating Act of 1958.

§ 170.01-5 *Assignment of functions.* By virtue of the authority vested in the Commandant of the Coast Guard by the Secretary of the Treasury in Treasury Department Order No. 167-32, dated September 23, 1958 (23 F. R. 7605), the regulations in this subchapter are prescribed to carry out the intent and purpose of the Federal Boating Act of 1958, and the Act of April 25, 1940, as amended (46 U. S. C. 526-526t).

SUBPART 170.05—APPLICATION

§ 170.05-1 *Scope.* The regulations in this subchapter are applicable in the United States, its Territories, and the District of Columbia.

§ 170.05-5 *Vessels subject to the requirements of this subchapter.* Except as specifically noted, this subchapter shall be applicable to undocumented vessels.

SUBPART 170.10—DEFINITIONS OF TERMS USED IN THIS SUBCHAPTER

§ 170.10-1 *Commandant.* This term means the Commandant of the U. S. Coast Guard.

§ 170.10-10 *Coast Guard District Commander.* This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his district.

§ 170.10-15 *Horsepower.* This term means the rated horsepower of the machine at maximum operating RPM.

§ 170.10-20 *Officer in Charge, Marine Inspection.* This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone.

§ 170.10-25 *Operate.* As set forth in subsection 13 (a) of the Act of April 25, 1940, as amended (46 U. S. C. 526*l*), this term "means to navigate or otherwise use a motorboat or a vessel."

§ 170.10-27 *Operator.* This term means the person who operates or who has charge of the navigation or use of a motorboat or a vessel.

§ 170.10-30 *Owner.* As set forth in subsection 2 (4) of the Federal Boating Act of 1958, this term "means the person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such possession."

§ 170.10-40 *State.* As set forth in subsection 2 (5) of the Federal Boating Act of 1958, this term "means a State of the United States, a Territory of the United States, and the District of Columbia."

§ 170.10-45 *Undocumented vessel.* This term means any vessel without a valid marine document issued by the Bureau of Customs.

§ 170.10-50 *Vessel.* As set forth in subsection 2 (2) of the Federal Boating Act of 1958, this term "includes every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water." This definition includes, but is not limited to, motorboats, sailboats, rowboats, canoes, ships, tugs, towboats, ferries, cargo vessels, passenger vessels, tank vessels, fishing vessels, charter boats, party boats, barges, scows, etc.

SUBPART 170.15—APPEALS AND JUDICIAL REVIEW

§ 170.15-1 *Judicial review or relief.* Nothing in this subchapter shall be so construed as to prevent any party from seeking a judicial review by, or relief in, an appropriate court of law. This applies to any standard or regulation in this subchapter or to any decision or action taken pursuant thereto by the Coast Guard. If any provision of the regulations in this subchapter is held invalid, the validity of the remainder of this subchapter shall not be affected thereby.

§ 170.15-5 *Right of administrative appeal.* (a) Any person aggrieved by a decision or action taken by the Coast Guard under the regulations in this subchapter has a right to an administrative appeal therefrom. An appeal from a decision or action initially made or performed by an enforcing officer may be made to his commanding officer. Any decision or action of such commanding officer may be appealed to the Coast Guard District Commander of the district in which the action was taken or decision was made. A further appeal may be made to the Commandant, U. S. Coast Guard, from the decision of the District Commander.

(b) No special form is required, but such appeal shall set forth the decision or action appealed from and the reasons why it should be set aside or revised. Arrangements may be made for presenting an appeal in person.

§ 170.15-10 *Time limits.* (a) Any appeal to a Coast Guard District Commander shall be made in writing within 30 days after the decision or action appealed from shall have been rendered or taken.

(b) Any appeal to the Commandant shall be made in writing within 30 days after the decision or action appealed from shall have been rendered or taken.

§ 170.15-15 *Decision on appeal.* Pending the determination of an appeal, the decision or action appealed from shall remain in effect.

§ 170.15-20 *Initial decisions or actions of the Commandant.* Any person aggrieved by any decision or action initiated by the Commandant may request a review by writing to the Commandant within 30 days after the decision or action has been rendered or taken. Such a request shall set forth the decision or action desired to be reviewed and the reasons why it should be set aside or revised.

§ 170.15-25 *Reports and assessments of penalties for violations.* The reports of violations, and the assessment, collection, mitigation or remission of civil penalties shall be in accordance with §§ 2.50-20 to 2.50-30, inclusive, of Subchapter A (Procedures Applicable to the Public) of this chapter.

PART 171—STANDARDS FOR NUMBERING

SUBPART 171.01—GENERAL

Sec.
171.01-1 Vessels to be numbered.
171.01-5 Additional vessels not to be numbered.
171.01-10 Determining horsepower of machinery.

SUBPART 171.05—VESSEL IDENTIFICATION

171.05-1 Numbering pattern to be used.
171.05-5 Display of number on vessel.
171.05-10 Numbering livery boats.
171.05-15 Numbering of manufacturers' and dealers' boats.

SUBPART 171.10—APPLICATION FOR NUMBER

SUBPART 171.13—OWNERSHIP

SUBPART 171.15—CERTIFICATE OF NUMBER

SUBPART 171.17—FEES AND CHARGES

SUBPART 171.20—AVAILABILITY OF RECORDS

AUTHORITY: §§ 171.01-1 to 171.20-5 issued under sec. 7, 72 Stat. 1757. Statutes interpreted or applied and statutes giving special authority are cited to text in parentheses.

SUBPART 171.01—GENERAL

§ 171.01-1 *Vessels to be numbered.* (a) Certain undocumented vessels are required to be numbered by subsection 3 (a) of the Federal Boating Act of 1958, which reads as follows:

Every undocumented vessel propelled by machinery of more than 10 horsepower, whether or not such machinery is the principal source of propulsion, using the navigable waters of the United States, its Territories and the District of Columbia, and every such vessel owned in a State and using the high seas, shall be numbered in accordance with this Act, except—

(1) foreign vessels temporarily using the navigable waters of the United States, its Territories and the District of Columbia;
(2) public vessels of the United States;
(3) State and municipal vessels;
(4) ships' lifeboats; and
(5) vessels designated by the Secretary under section 7 (b) of this Act.

(b) The word "machinery" includes inboard and outboard engines and all other types of motors or mechanical devices capable of propelling vessels.

(c) The phrase "10 horsepower" means the aggregate horsepower of all propellant machinery on a vessel.

(d) The phrase "ships' lifeboats" does not include dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

(e) Nothing in this section shall prohibit the numbering of any undocumented vessel, which may be propelled by machinery, upon request of the owner.

§ 171.01-5 *Additional vessels not to be numbered.* Pursuant to subsection 3 (a) (5) of the Federal Boating Act of 1958, the following are exempt from the requirement to be numbered:

(a) Undocumented vessels used exclusively for racing.

(Sec. 3 (a) (5), and 7 (b), 72 Stat. 1754, 1757)

§ 171.01-10 *Determining horsepower of machinery.* (a) In general, for existing and new equipment, the manufacturer's rated horsepower at a stated normal maximum operating RPM as set forth on the name plate attached to the engine, or as stamped on the engine, or as described in a "book of instructions" or other literature issued for such engine will be accepted as prima facie evidence of the horsepower of the machinery in question. In event the machinery does not have marked thereon or accompanying it any literature or tag setting forth the manufacturer's rated horsepower, then the Coast Guard's listing of horsepower (if any) will be accepted as prima facie evidence of the horsepower.

(b) In the event the owner or operator of a power propelled vessel disagrees with the findings of the Coast Guard as to horsepower, it shall be the responsibility of such owner or operator to prove to the satisfaction of the Coast Guard what is the actual horsepower of the propelling machinery.

SUBPART 171.05—VESSEL IDENTIFICATION

§ 171.05-1 *Numbering pattern to be used.* (a) The numbers issued pursuant to the Federal Boating Act of 1958 shall be in accordance with the pattern described in this section. The number shall be divided into parts which indicate geographical zone of a State, if required; a symbol indicating the State of principal use; and a combination of numerals and letters, which furnish individual identification of the vessel. The group of 3 digits appearing between letters shall be separated from those letters by hyphens or equivalent spaces. For example: NY-001-AA or 4NY 999 ZZ.

(b) If a State is divided into zones, each zone shall be represented in the vessel's number by an arabic numeral which shall precede the symbol indicating the State. No State shall be divided into more than 9 zones. When a State is not divided into zones this arabic numeral shall be omitted.

(c) The second part of the number shall be an abbreviation in capital letters of the State. The abbreviations of the States are as follows:

Alabama—AL
Alaska—AK
Arizona—AZ
Arkansas—AR
California—CF
Colorado—CL
Connecticut—CT
Delaware—DL
Florida—FL
Georgia—GA
Idaho—ID
Illinois—IL
Indiana—IN
Iowa—IA
Kansas—KA
Kentucky—KY
Louisiana—LA
Maine—ME
Massachusetts—MS
Maryland—MD
Michigan—MC
Minnesota—MN
Mississippi—MI
Missouri—MO
Montana—MT
North Carolina—NC
North Dakota—ND
Nebraska—NB
Nevada—NV
New Hampshire—NH
New Jersey—NJ
New Mexico—NM
New York—NY
Ohio—OH
Oklahoma—OK
Oregon—OR
Pennsylvania—PA
Rhode Island—RI
South Carolina—SC
South Dakota—SD
Tennessee—TN
Texas—TX
Utah—UT
Virginia—VA
Vermont—VT
Washington—WN
West Virginia—WV
Wyoming—WY
Wisconsin—WS
District of Columbia—DC
Territory of Hawaii—HA

(d) The third part of the boat number shall consist of three arabic numerals and two capital letters in sequence, separated by a hyphen or equivalent space, in accordance with the serials, numerically and alphabetically, starting with "001-AA" through "999-AA", "001-AB" through "999-AB", etc., to "001-ZZ" through "999-ZZ". Since the letter "Q" may be mistaken for the letter "O", all letter sequences using "Q" shall be omitted.

(Sec. 3 (c), 72 Stat. 1754)

§ 171.05-5 *Display of number on vessel.* (a) Subsection 3 (f) of the Federal Boating Act of 1958 requires in part that "the number awarded * * * shall be painted on, or attached to, each side of the bow of the vessel for which it was issued * * *".

(b) The numbers shall read from left to right and shall be placed and maintained so as to provide clear legibility for surface identification. The numbers shall be in block characters of good proportion, not less than 4 inches in height. The numbers shall be of a color which will contrast with the color of the hull so as to be clearly visible and legible; i. e., dark numbers on a light hull, or light numbers on a dark hull.

(Sec. 3 (c) (3), (f), 72 Stat. 1754, 1755)

(c) Subsection 3 (f) of the Federal Boating Act of 1958 also provides "no other number shall be carried on the bow of such vessel."

§ 171.05-10 *Numbering livery boats.* (a) The numbering requirements of this part shall apply to livery boats.

(b) The certificate of number of a livery boat shall be plainly marked, "livery boat."

§ 171.05-15 *Numbering of manufacturers' and dealers' boats.* (a) The numbering requirements of this part shall apply to boats operated by manufacturers and dealers.

(b) The description of the boat will be omitted from the certificate of number since the numbers and the certificates of number awarded may be transferred from one boat to another. In lieu of the description, the word "manufacturer" or "dealer," as appropriate, will be plainly marked on each certificate.

(c) The manufacturer or dealer may have the number awarded printed upon

or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements in § 171.05–5.

SUBPART 171.10—APPLICATION FOR NUMBER

§ 171.10–1 *To whom made.* (a) On and after April 1, 1960, the owner of any vessel required to be numbered and principally used in a State which has not assumed the functions of numbering under the Federal Boating Act of 1958 shall apply to the U. S. Coast Guard for a number for such vessel.

(b) An undocumented vessel principally used in a State which has assumed the functions of numbering under the Federal Boating Act of 1958 will not be numbered by the Coast Guard.

§ 171.10–5 *Application requirements.* The owner shall submit an application for a number which shall include the following information:

(a) Name and address.
(b) Date of birth.
(c) Present citizenship.
(d) State in which the vessel is principally used.
(e) Present number (if any).
(f) Construction of vessel (wood, steel, aluminum, plastic, other).
(g) Type of propulsion (outboard, inboard, other: gas diesel).
(h) Length of vessel.
(i) Make and year built (if known).
(j) Use (pleasure, livery, dealer, manufacturer, commercial, other).
(k) A certification of ownership.
(l) Signature of owner.

§ 171.10–15 *State in which vessel is principally used.* (a) For the purposes of numbering, the statement of the owner with respect to the State in which the vessel is to be principally used, as set forth in the application for number, will be accepted, prima facie, as true.

(b) If the vessel is to be principally used on the high seas, then it shall be assigned a number for the State in which the vessel is usually docked, moored, housed, or garaged.

§ 171.10–20 *Application for renewal of number.* An application for renewal of a certificate of number shall be made by the owner on an application therefor which must be received by the Coast Guard within a period consisting of the last 90 days before the expiration date on the certificate of number and the same number will be issued upon renewal. Any application not so received shall be treated in the same manner as an original application.

§ 171.10–25 *Replacement of lost or destroyed certificate of number.* If a certificate of number is lost or destroyed, the owner shall, within 15 days, notify in writing the Coast Guard office issuing the number and certificate of number, describing the circumstances of the loss or destruction and certifying to its loss, together with a complete application form, and accompanied by the fee prescribed in § 171.17–1.

SUBPART 171.13—OWNERSHIP

§ 171.13–1 *Claim of ownership.* (a) The certified statement of ownership on the application for number shall be the minimum requirement for proof of ownership acceptable to the Coast Guard.

§ 171.13–5 *Liens.* Liens of all kinds, including reservations or transfers of title to secure debts or claims, will be disregarded in determining ownership under this section. A lienholder who acquires possession and title by virtue of default in the terms of the lien instrument, or any other person who acquires ownership through any such action of a lienholder, may apply for a number and shall attach to such application a sworn statement explaining the facts in detail.

SUBPART 171.15—CERTIFICATE OF NUMBER

§ 171.15–1 *Information required on certificate.* The certificate of number shall include the following minimum information:

(a) Name and address of owner.
(b) Number awarded to vessel.
(c) Expiration date of certificate.
(d) State in which principally used.
(e) Construction of vessel (wood, steel, aluminum, plastic, other).
(f) Type of propulsion (inboard, outboard, other).
(g) Length of vessel.
(h) Make and year built.
(i) Notice to the owner that the operator shall:
(1) Always carry this certificate on vessel when in use.
(2) Report every accident involving injury or death to persons, or property damage over $100.
(3) Stop and render aid or assistance if involved in boating accident.
(j) Notice to the owner that he shall report changes of ownership or address, and destruction or abandonment of vessel.

§ 171.15–5 *Size and characteristics of certificate.* The certificate of number shall be pocket size (approximately 2½" x 3½") and water resistant.

§ 171.15–10 *Temporary certificate.* When the issuance of the original certificate of number will delay the lawful use of a vessel, the owner of the vessel will be furnished a temporary certificate of number valid for 30 days from date of issue. This temporary certificate shall be carried on board when the vessel is being operated.

§ 171.15–15 *Period of validity of certificate.* The original certificate of number initially awarded by the Coast Guard shall be valid for a period ending 3 years from the anniversary of the date of birth of the applicant next succeeding the issuance of the certificate. Each renewal shall be valid for a period ending 3 years from the date of expiration of the certificate so renewed.

§ 171.15–20 *Notification of changes required.* (a) When the owner of a Coast Guard numbered vessel changes the State in which the vessel is principally used, he shall surrender the certificate of number to the Coast Guard. The owner shall also apply for another original number to the office issuing numbers for that State.

(b) When the owner of a Coast Guard numbered vessel changes his address from that shown on his certificate, but does not change the State in which the vessel is principally used, he shall notify the Coast Guard of his new address within a period not to exceed 15 days from such change.

(c) When a Coast Guard numbered vessel is lost, destroyed, abandoned, or transferred to another person, the certificate of number issued for the vessel shall be surrendered to the Coast Guard within a period not to exceed 15 days after such event. When the vessel is lost, destroyed, or abandoned and the certificate of number has been destroyed, the owner shall within 15 days notify the Coast Guard by letter or postal card of the change in the status of the vessel.

(d) The application for number by a new owner of a vessel shall, for purposes of fee, be regarded as an original application for number, but where the vessel will continue in use in the same State of principal use, the new number shall be identical with the previous one, except where a lienholder acquires title and lawful possession by virtue of his lien, in which case a new number shall be issued.

(e) The intent of this part is that the owner of an undocumented vessel shall not have more than one valid number or valid certificate of number for any one vessel at any time. Therefore, the owner will violate the regulations if he retains more than one valid certificate of number for any one vessel.

(f) A change of motor is not required to be reported to the Coast Guard.

§ 171.15–30 *Cancellation of certificate and voiding of number.* (a) Subsection 3 (e) of the Federal Boating Act of 1958 authorizes the cancellation of certificates of number, thereby voiding the numbers issued. This means that a certificate may be canceled and number voided or reissued by proper authority even though such action occurs before the expiration date on the certificate and such certificate is not surrendered to the issuing office.

(b) Certain causes for cancellation of certificates and voiding of numbers are:
(1) Surrender of certificate for cancellation.
(2) Issuance of a new number for the same vessel.
(3) Issuance of a marine document by the Bureau of Customs for the same vessel.
(4) False or fraudulent certification of ownership in an application for number.

(c) In the absence of an application for renewal as provided in § 171.10–25 a number is automatically void on the date of expiration as shown on the certificate of number. Voided numbers may be reissued without regard to previous holders.

(Sec. 3 (e), 72 Stat. 1755)

SUBPART 171.17—FEES AND CHARGES

§ 171.17–1 *Fees and method of payment.* (a) The fees for numbering and renewal of numbers for vessels numbered by the U. S. Coast Guard are:

(1) Original numbering—$5.00. (Estimated maximum in relation to costs.)
(2) Renewal of number—$3.00. (Estimated maximum in relation to costs.)
(3) Reissue of lost or destroyed certificate of number—$1.00. (Estimated maximum in relation to costs.)

(b) All fees for numbering and renewal of number are payable by money order to the United States Coast Guard and shall accompany the application.

(Sec. 5, 72 Stat. 1756)

SUBPART 171.20—AVAILABILITY OF RECORDS

§ 171.20–1 *Enforcement or assistance programs.* Upon request, information on ownership and identity of Coast Guard numbered vessels shall be available to Federal, State, and local officials, as needed, in any enforcement or assistance programs.

§ 171.20–5 *Disclosure of information.* (a) The records pertaining to the numbering of undocumented vessels pursuant to this part are considered to be public records.

(b) Information based on such Coast Guard records may be released upon oral or written inquiry, subject only to reasonable restrictions necessary to carry on the business of the office. The Coast Guard may permit excerpts to be made or the copying or reproduction thereof by a private individual or concern authorized by the Coast Guard. The fees and charges for copying, certifying, or searching of records for information shall be assessed in accordance with 33 CFR 1.25.

(Sec. 501, 65 Stat. 290; 5 U. S. C. 140)

PART 172—NUMBERING REQUIREMENTS UNDER ACT OF JUNE 7, 1918

NOTE: It is proposed to revise the title of Part 172 as set forth above and to add a Subpart 172.25, which will explain the termination requirements during that transition period necessary in establishing a new numbering system under Part 171. No changes are contemplated in §§ 172.01–1 to 172.20–10, inclusive.

SUBPART 172.25—TERMINATION REQUIREMENTS

Sec.
172.25–1 Effective termination dates of numbering laws.
172.25–5 Effective termination dates for regulations in this Part.
172.25–10 Interim use of certificates of award of number and numbers awarded.

AUTHORITY: §§ 172.25–1 to 172.25–10 issued under sec. 7, 72 Stat. 1757. Interpret or apply secs. 11, 12, 72 Stat. 1758.

§ 172.25–1 *Effective termination dates of numbering laws.* Effective April 1, 1960, the Act of June 7, 1918, as amended, and section 21 of the Act of April 25, 1940, are repealed by section 12 of the Federal Boating Act of 1958. In addition, these laws shall not be applicable prior to April 1, 1960, in any State which assumes the functions of numbering under the Federal Boating Act of 1958.

§ 172.25–5 *Effective termination dates for regulations in this part.* (a) No certificate of award of number will be issued nor numbers assigned to vessels pursuant to this part on and after April 1, 1960.

(b) The regulations in this part shall not be applicable in any State which has assumed the functions of numbering under the Federal Boating Act of 1958.

§ 172.25–10 *Interim use of certificates of award of number and numbers awarded.* Pending receipt of a certificate of number under the Federal Boating Act of 1958, for which application has been made and proof thereof retained, the owner of every undocumented vessel of more than 10 horsepower with a valid certificate of award of number on March 31, 1960, shall retain such number and certificate for temporary identification until April 1, 1961, or until renumbered pursuant to the Federal Boating Act of 1958, whichever first occurs.

PART 173—STATISTICAL INFORMATION AND REPORTS

SUBPART 173.01—STATISTICS REQUIRED

Sec.
173.01–1 Required reports.
173.01–5 Reports with respect to numbered vessels.
173.01–10 Reports with respect to boating accidents.

SUBPART 173.10—AVAILABILITY OF INFORMATION

173.10–1 Information available for public inspection.

AUTHORITY: §§ 173.01–1 to 173.10–1 issued under secs. 13 (c) and 17, 54 Stat. 166, as amended, secs. 7 (a) and 10, 72 Stat. 1757; 46 U. S. C. 526*l*, 526p.

SUBPART 173.01—STATISTICS REQUIRED

§ 173.01–1 *Required reports.* The Coast Guard will obtain, compile, analyze, and publish periodic reports in a uniform manner with respect to vessels having currently valid certificates of number, and boating accidents.

§ 173.01–5 *Reports with respect to numbered vessels.* The Coast Guard will compile statistics on numbered vessels as of March 31, June 30, September 30, and December 31 of each year. This information includes as of the reporting date:

(a) The total number of all valid certificates of number outstanding.

(b) The total number of valid certificates of number held by vessels numbered under subsection 3 (a) of the Federal Boating Act of 1958.

(c) The total numbers of valid certificates of number held by vessels described by class, type, and construction.

§ 173.01–10 *Reports with respect to boating accidents.* The Coast Guard will compile statistics on boating accidents involving undocumented vessels reported during each quarter, ending on March 31, June 30, September 30, and December 31 of each year. This information will include:

(a) The total number of all boating accidents reported during each such period.

(b) The totals of boating accidents reported during each such period, grouped according to the cause, nature, and results and including the class, type, and construction of vessels involved.

(c) The totals of boating accidents reported during each such period by vessels numbered under subsection 3 (a) of the Federal Boating Act of 1958 according to vessels described by class, type, and construction.

SUBPART 173.10—AVAILABILITY OF INFORMATION

§ 173.10–1 *Information available for public inspection.* After statistical information has been released or published, the statistical records and reports obtained and compiled by the Coast Guard shall be made available for inspection and use of the public during normal office hours subject to reasonable restrictions necessary for the carrying on of the business of the office.

ITEM II—BOATING ACCIDENTS INVOLVING UNDOCUMENTED VESSELS

12. It is proposed to add a Subpart 136.30 to Part 136, which will describe the requirements governing reportable boating accidents involving undocumented vessels. The proposals read as follows:

Subchapter K—Marine Investigations and Suspension and Revocation Proceedings

PART 136—MARINE INVESTIGATION REGULATIONS

SUBPART 136.30—BOATING ACCIDENTS

Sec.
136.30–1 General.
136.30–5 Reportable boating accidents.
136.30–10 Notice of boating accident.
136.30–15 Written report of reportable boating accident.
136.30–20 Disclosure of information.

AUTHORITY: §§ 136.30–1 to 136.30–20 issued under secs. 13 (c) and 17, 54 Stat. 166, as amended, secs 7 (c) and 10, 72 Stat. 1757; 46 U. S. C. 526*l*, 526p.

§ 136.30–1 *General.* (a) Except as specifically noted otherwise, the provisions of this subpart shall apply to all undocumented vessels.

(b) The provisions in this subpart are applicable in the United States, its Territories, and the District of Columbia as well as to every such vessel which is owned in a State, Territory, or the District of Columbia and using the high seas.

§ 136.30–5 *Reportable boating accidents.* (a) Subsection 13 (c) of the Act of April 25, 1940, as amended (46 U. S. C. 526*l*), reads as follows:

In the case of collision, accident, or other casualty involving a motorboat or other vessel subject to this Act, the operator thereof, if the collision, accident, or other casualty results in death or injury to any person, or damage to property in excess of $100, shall file with the Secretary of the Department within which the Coast Guard is operating, unless such operator is required to file an accident report with the State under section 3 (c) (6) of the Federal Boating Act of 1958, a full description of the collision, accident, or other casualty, including such information as the Secretary may by regulation require.

(b) For the purpose of this subpart a "boating accident" means a collision, accident, or other casualty involving an undocumented vessel.

(c) Both a notice and a report are required whenever an undocumented vessel is involved in a boating accident which

results in any one or more of the following:

(1) Loss of life.

(2) Injury causing any person to remain incapacitated for a period in excess of 24 hours.

(3) Actual physical damage to property (including vessels) in excess of $100.

§ 136.30–10 *Notice of boating accident.* The operator of any undocumented vessel not numbered by a State under the Federal Boating Act of 1958, if involved in a reportable boating accident on navigable waters of the United States or on the high seas shall give notice as soon as possible to any Coast Guard Unit. This notice, if it is made in writing without delay and contains the required information, will fulfill the requirements for a written report as set forth in § 136.30–15.

§ 136.30–15 *Written report of reportable boating accident.* (a) Within 10 days after the occurrence of a reportable boating accident described in § 136.30–5 (c), the operator shall submit in writing a report respecting such accident which is in addition to the notice required by § 136.30–10. A Coast Guard form may be used for this purpose. This report, if filed without delay, will also constitute the notice required by § 136.30–10. The written report shall be delivered to the Officer in Charge, Marine Inspection, nearest the place where such accident occurred or nearest to the port of first arrival after such accident.

(b) Every written report shall contain the following information:

(1) The identities of vessels involved.

(2) The locality where the boating accident occurred.

(3) The time and date when the boating accident occurred.

(4) The names, addresses and ages of the operators of the vessels involved.

(5) The names and addresses of the owners of vessels or property involved.

(6) The names and addresses of any person or persons injured or killed.

(7) The nature and extent of injury to any person or persons.

(8) A description of damage to property (including vessels) and estimated cost of repairs.

(9) A description of the boating accident (including opinions as to the causes).

(10) A description of each vessel involved, including class, type, construction, and horsepower.

(11) Names and addresses of known witnesses.

§ 136.30–20 *Disclosure of information.* (a) The boating accident reports are intended to furnish the information necessary for the Coast Guard to publish statistics, make findings of causes of accidents, and recommendations for prevention of such accidents.

(b) Information from individual reports will be released, or excerpts therefrom, or copies thereof will be made available to the owners and operators of vessels involved and their counsel, and other parties in interest. Further requirements regarding disclosure of records are in Subpart 136.13 in this part.

(c) These reports may be used for additional statistical studies subject to prior arrangements and reasonable restrictions necessary in the carrying on of the business of the office.

ITEM III—BOARDING UNDOCUMENTED VESSELS

13. It is proposed to amend the title of Subpart 26.15 and amend the text of § 26.15–1 to read as follows:

Subchapter C—Uninspected Vessels

PART 26—OPERATIONS

SUBPART 26.15—BOARDING

§ 26.15–1 *May board at any time.* (a) In addition to any other authority provided by law, the boarding of vessels is authorized by subsection 8 (c) of the Federal Boating Act of 1958, which reads as follows:

Commissioned, warrant, and petty officers of the Coast Guard may board any vessel required to be numbered under this Act at any time such vessel is found upon the navigable waters of the United States, its Territories, and the District of Columbia, or on the high seas, address inquiries to those on board, require appropriate proof of identification therefrom, examine the certificate of number issued under this Act, or in the absence of such certificate require appropriate proof of identification of the owner of the vessel, and, in addition, examine such vessel for compliance with this Act, the Act of April 25, 1940, as amended, and the applicable rules of the road.

(b) To facilitate the boarding of vessels by the commissioned, warrant, and petty officers of the Coast Guard in the exercise of their authority, every vessel subject to the Federal Boating Act of 1958, or the Act of April 25, 1940, as amended (46 U. S. C. 526–526t), if under way and upon being hailed by a Coast Guard vessel or patrol boat, shall stop immediately and lay to, or shall maneuver in such a way as to permit the boarding officer to come aboard. Failure to stop to permit a boarding officer to board a vessel or refusal to comply will subject the operator or owner to penalties provided in these laws.

(c) Coast Guard boarding vessels will be identified by the display of the Coast Guard ensign as a symbol of authority and the Coast Guard personnel will be dressed in Coast Guard uniform. The Coast Guard boarding officer upon boarding a vessel will identify himself to the master, owner, or operator and explain his mission.

(Sec. 17, 54 Stat. 166, as amended, sec. 7, 72 Stat. 1757, 46 U. S. C. 526p)

Dated: October 28, 1958.

[SEAL] J. A. HIRSHFIELD,
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 58-9080; Filed, Oct. 31, 1958; 8:50 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 161]

FEDERAL RANGE CODE FOR GRAZING DISTRICTS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of June 28, 1934 (48 Stat. 1269, 43 U. S. C. 315, 315a–315r) as amended and supplemented, it is proposed to amend and revise the regulations issued under the said act as set forth below.

Interested persons may submit in triplicate written comments, suggestions, or objections in respect to the proposed regulations to the Bureau of Land Management, Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER.

ROGER ERNST,
Assistant Secretary of the Interior.

OCTOBER 30, 1958.

1. Paragraph (k) (1) of § 161.2 is amended to read as follows:

§ 161.2 *Definitions.* * * *

(k) (1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i. e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property,[1] (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

2. Paragraph (k) (3) (ii) of § 161.2 is revised to read as follows:

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 161.4.

The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that

[1] Such rules were adopted in Montana Grazing District No. 5, Utah Grazing District No. 1, and all grazing districts in Oregon.

necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

3. Paragraph (d) (2) of § 161.5 is amended to read as follows:

§ 161.5 *Rating and classification of Federal range.* * * *

(d) *Unit-wide or area-wide adjudication.* * * *

(2) The district manager shall give written notice by registered mail[3] of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 161.9 (b). Thereafter, and provided there is then pending a valid application for grazing privileges, the district manager will render his final decision thereon and will allow the right of appeal to the Examiner in accordance with § 161.10.

4. Paragraph (d) of § 161.6 is amended to read as follows:

§ 161.6 *Issuance of licenses and permits.* * * *

(d) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the district manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations regularly authorized on the basis of properties in class 1 and class 2.

5. In § 161.6 (e), subparagraphs (7), (9), (12), (13) (ii) and (14) (ii) are amended and a new subparagraph (14) (iii) is added as follows:

(e) *Terms and conditions.* * * *

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

* * * * *

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for nonuse thereof in whole or in part or

(ii) To accept a license or permit issued pursuant to such application.

* * * * *

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

[3] Wherever registered mail is required in this part, certified mail may be used in lieu thereof in accordance with § 101.19 of this chapter.

(13) * * *

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) * * *

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the district manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of § 161.9 (d).

6. Paragraph (a) (1) of § 161.7 is amended to read as follows:

§ 161.7 *Transfers of base property; base property qualifications; relinquishments*—(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 161.3 (a), to so much of the grazing privileges as are based thereon. In any event, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 161.6 (e) (8) (i).

7. Paragraphs (c) and (d) of § 161.8 are amended to read as follows:

§ 161.8 *Fees; time of payment; refunds.* * * *

(c) *Crossing permits.* Upon application filed with the district manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit, or to the extent the crossing permit involves the use of a stock driveway created under section 10 of the Stockraising Homestead Act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300).

(d) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[3] A permit may be canceled or reduced pursuant to § 161.9 (d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 30 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

8. A new subparagraph (4) is added to paragraph (b) of § 161.11, as follows:

§ 161.11 *General rules of the range.* * * *

(b) *Rules of fair range practice.* * * *

(4) When so requested by the State Supervisor or district manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

9. Paragraphs (d), (e) (1) and (2) of § 161.12 are amended to read as follows:

§ 161.12 *Procedure for enforcement of rules and regulations.* * * *

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* All offers of settlement for the value of the forage consumed in trespass and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Supervisor for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Supervisor, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Supervisor that a wilful violation exists he shall cause a written notice

[3] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in § 161.12, or by other action under the law.

to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts or of the act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the reasonable commercial value of any forage consumed. The notice will cite the licensee or permittee to appear before an Examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the reasonable commercial value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the reasonable commercial value of forage consumed and directing the district manager to suspend, reduce, or revoke the license or permit or to deny renewal, if the facts so warrant.

[F. R. Doc. 58-9113; Filed, Oct. 31, 1958; 8:56 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[7 CFR Part 319]

IMPORTATION OF SWEETPOTATOES AND YAMS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that the Administrator of the Agricultural Research Service, pursuant to section 7 of the Plant Quarantine Act of 1912 (7 U. S. C. 160) is considering the amendment of subpart—Sweetpotatoes and Yams containing notice of Quarantine No. 29 prohibiting the importation of sweetpotatoes and yams from all foreign countries (§ 319.29) because of sweetpotato weevils and the potato scarabee, by deleting therefrom, wherever they occur in the subpart heading and elsewhere therein, the words "and yams," "or yams," "and Dioscorea spp."

This amendment would have the effect of removing yams from a prohibitory status under Quarantine No. 29 and automatically placing their importation for consumption under the provisions of Fruit and Vegetable Quarantine No. 56 (§§ 319.56, 319.56–1 et seq.), and their importation as propagating material under the requirements of Nursery Stock, Plant, and Seed Quarantine No. 37, as amended (§§ 319.37, 319.37–1 et seq., and 1957 Supp.).

For many years this quarantine has prohibited the entry of both tubers and plants of sweetpotatoes and yams, whether for propagation or food. Since its issuance in 1917, additional plant pests attacking sweetpotatoes in various countries have been reported. These include diseases caused by fungi and viruses. The quarantine has not been revised to include these additional pests because its prohibitory features, although based on only two injurious insects, effectively safeguarded the United States from the entry of all pests that might be present in or on sweetpotatoes and yams. At the time the quarantine was promulgated there was no satisfactory treatment for these two items to rid them of the two insect species named. This is still the case with the diseases attacking sweetpotatoes, which diseases cannot be destroyed by any known treatment.

Yams on the other hand can now be fumigated for insect infestation and are not reported to be attacked by the diseases to which sweetpotatoes are susceptible. There has recently been developed a schedule of methyl bromide fumigation that is effective against insect infestation in yams without damaging the tubers. Further, the Commissioner of Food and Drugs, Department of Health, Education, and Welfare, on July 8, 1958, established tolerances for residues of inorganic bromide on yams resulting from their fumigation with methyl bromide (23 F. R. 5165). These factors make it feasible to revoke the prohibition on the importation of yams. Notice of proposed administrative instructions containing an approved schedule for the fumigation of yams imported from the West Indies, under § 319.56–2, is being issued at the same time as this document.

The proposed amendment to allow the importation of yams would not lessen protection against the importation of sweetpotato weevils and the sweetpotato scarabee. Imports of yam tubers and plants would be subject to such treatment, under the Fruit and Vegetable Quarantine regulations and the Nursery Stock, Plant, and Seed Quarantine regulations, respectively, as would be necessary to assure their freedom from plant pests.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same with the Director of the Plant Quarantine Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D. C., within 30 days after the date of the publication of this notice in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318; 7 U. S. C. 162. Interprets or applies sec. 7, 37 Stat. 317; 7 U. S. C. 160)

Done at Washington, D. C., this 28th day of October 1958.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 58-9073; Filed, Oct. 31, 1958; 8:48 a. m.]

[7 CFR Part 319]

FOREIGN QUARANTINE NOTICES

ADMINISTRATIVE INSTRUCTIONS PRESCRIBING METHOD OF TREATMENT OF YAMS FROM WEST INDIES

Notice is hereby given under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that the Director of the Plant Quarantine Division, contingent upon the adoption of a proposed amendment to Sweetpotato and Yam Quarantine (Notice of Quarantine No. 29, § 319.-29 [1]), is considering the issuance of administrative instructions pursuant to § 319.56–2 of the regulations supplemental to the Fruit and Vegetable Quarantine (Notice of Quarantine No. 56, 7 CFR and 1957 Supp., 319.56) under section 5 of the Plant Quarantine Act of 1912 (7 U. S. C. 159), said administrative instructions to be designated as § 319.56–2m and to read as follows:

§ 319.56–2m *Administrative instructions prescribing method of treatment of yams from West Indies.*—(a) *Fumigation upon arrival.* Except as otherwise provided in paragraph (b) of this section, approved fumigation with methyl bromide at normal atmospheric pressure, in accordance with the following procedure, upon arrival at the port of entry, is hereby prescribed as a condition of importation under permit under § 319.-56–2 for all shipments of yams from the West Indies.

(1) *West Indies.* As used in this paragraph, the term "West Indies" means the foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, including, among others, Cuba, Jamaica, Dominican Republic, and the Bahamas, Leeward, and Windward Islands, but excluding the chain of islands adjacent and parallel to the north coast of South America (the largest of which are Aruba, Curacao, Bonaire, Tortuga, Margarita, Trinidad, and Tobago).

(2) *Ports of entry.* Yams to be offered for entry may be shipped, under permit under § 319.56–2, direct from the country of origin to ports in the United States where approved fumigation facilities are available.

(3) *Approved fumigation.* (i) the approved fumigation shall consist of fumigation with methyl bromide at normal atmospheric pressure, in a fumigation chamber that has been approved for that purpose by the Plant Quarantine Division. The dosage shall be applied at the following rates:

Temperature (° F.)	Dosage (pounds of methyl bromide per 1,000 cubic feet)	Exposure period (hours)
90–96	2.5	4
80–89	3.0	4
70–79	3.5	4

(ii) Yams to be fumigated may be packed in slatted crates or other gas-permeable containers. The fumigation chamber shall not be loaded to more than

[1] See F. R. Document 58-9073, *supra*.

two-thirds of its capacity. The four-hour exposure period shall begin when all the fumigant has been introduced into the chamber and volatilized. Cubic feet of space shall include the load of yams to be fumigated. The required temperatures apply to both the air and the yams. Good circulation above and below the load shall be provided as soon as the yams are loaded in the chamber and shall continue during the full period of fumigation and until the yams have been removed to a well-ventilated location. Fumigation of yams below the minimum temperature prescribed in the fumigation schedule may result in injury to the yams and should be avoided. Yams are sensitive to bruising and should be carefully packed to prevent this. At the same time they should be given as much aeration as possible.

(4) *Other conditions.* (i) Inspectors of the Plant Quarantine Division will supervise the fumigation of yams and will specify such safeguards as may be necessary for their handling and transportation before and after fumigation, if, in the opinion of the inspector, this is necessary to assure there will be no pest risk associated with the importation and treatment. Final release of the yams for entry into the United States will be conditioned upon compliance with the specified safeguards.

(ii) Supervision of approved fumigation chambers will, if practicable, be carried on as a part of normal port inspection activities. When so available such supervision will be furnished without cost to the owner of the yams or his representative.

(5) *Costs.* All costs of treatment and required safeguards and supervision, other than the services of the supervising inspector during regularly assigned hours of duty and at the usual place of duty, shall be borne by the owner of the yams, or his representative.

(6) *Department not responsible for damage.* While the prescribed treatment is judged from experimental tests to be safe for use with yams, the Department assumes no responsibility for any damage sustained through or in the course of treatment or because of pretreatment or posttreatment safeguards.

(b) *Alternate procedure.* Yams produced in Cuba if satisfactorily treated in Cuba and otherwise handled and certified as provided in this paragraph will be eligible for entry under permit under § 319.56–2.

(1) *Approved fumigation.* The yams shall be fumigated at approved plants in Cuba in accordance with paragraph (a) (3) of this section.

(2) *Approval of fumigation plants; costs of supervision.* Fumigation in Cuba will be contingent upon the availability of a fumigation plant, approved by the Director of the Plant Quarantine Division, to apply the treatment prescribed in paragraph (a) (3) of this section and upon the availability of qualified personnel for assignment to approve the plant and to supervise the treatment and posttreatment handling of the yams in Cuba. Those in interest must make advance arrangements for approval of the fumigation plant and for supervision, and furnish the Director of the Plant Quarantine Division with acceptable assurances that they will provide, without cost to the United States Department of Agriculture, all transportation, per diem, and other incidental expenses of such personnel and compensation for such personnel for their services in excess of 40 hours weekly, in connection with such approval and supervision, according to the rates established for the payment of inspectors of the Plant Quarantine Division.

(3) *Supervision of fumigation and subsequent handling.* The fumigation prescribed in this paragraph and the subsequent handling of the yams so fumigated must be under the supervision of a representative of the Plant Quarantine Division. The treated yams must be safeguarded against insect infestation during the period prior to shipment from Cuba, in a manner required by such representative.

(4) *Certification.* Yams will be certified by a representative of the Plant Quarantine Division in Cuba for entry into the United States upon the basis of treatment under this paragraph and compliance with the posttreatment safeguard requirements imposed by such representative. The final release of the yams for entry into the United States will be conditioned upon compliance with such requirements and upon satisfactory inspection on arrival to determine efficacy of treatment.

(5) *Costs.* All costs incident to fumigation, including those for construction, equipping, maintaining and operating fumigation plants and facilities, and carrying out requirements of posttreatment safeguards, and all costs as indicated in subparagraph (2) of this paragraph incident to plant approval and supervision of treatment and subsequent handling of the yams in Cuba shall be borne by the owner of the yams or his representative.

(6) *Department not responsible for damage.* The treatment prescribed in paragraph (a) (3) of this section is judged from experimental tests to be safe for use with yams. However, the Department assumes no responsibility for any damage sustained through or in the course of treatment, or because of posttreatment safeguards.

(7) *Ports of entry.* Yams to be offered for entry in accordance with the alternate procedure provided for in this paragraph may be entered under permit under § 319.56–2 at any United States port where an inspector is stationed.

(8) *Ineligible shipments.* Any shipments of yams produced in Cuba that are not eligible for certification under the alternate procedure provided for in this paragraph may enter only upon compliance with paragraph (a) of this section.

In the event that Sweetpotato and Yam Quarantine No. 29 is amended as proposed to eliminate the prohibitions against the importation of yams from foreign countries, it is proposed to issue the above administrative instructions to prescribe a method of treatment for yams imported from the West Indies. Such importation is now prohibited under the provisions of Quarantine No. 29.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same with the Director of the Plant Quarantine Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D. C., within 30 days after the date of the publication of this notice in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318; 7 U. S. C. 162. Interprets or applies sec. 5, 37 Stat. 316; 7 U. S. C. 159)

Done at Washington, D. C., this 28th day of October 1958.

[SEAL] E. P. REAGAN,
Director,
Plant Quarantine Division.

[F. R. Doc. 58-9072; Filed, Oct. 31, 1958; 8:48 a. m.]

NOTICES

DEPARTMENT OF COMMERCE

Maritime Administration

U. S. ATLANTIC/FAR EAST

NOTICE OF TENTATIVE CONCLUSIONS AND DETERMINATIONS REGARDING ESSENTIALITY AND UNITED STATES FLAG SERVICE REQUIREMENTS OF TRADE ROUTE NO. 12

Notice is hereby given that on October 23, 1958, the Maritime Administrator, acting pursuant to section 211 of the Merchant Marine Act, 1936, as amended, found and determined the essentiality and United States flag service requirements of United States foreign Trade Route No. 12 and, in accordance with his action of July 27, 1956, ordered that the following tentative conclusions and determinations reached by the Maritime Administrator with respect to said route be published in the FEDERAL REGISTER:

1. Trade Route No. 12, as described below, is reaffirmed as an essential foreign trade route of the United States:

Trade Route No. 12—U. S. Atlantic/Far East. Between U. S. Atlantic ports (Maine/Atlantic Coast Florida to but not including Key West) and ports in the Far East (Japan, Formosa, Philippine Islands, and the Continent of Asia from the Union of Soviet Socialist Republics to Thailand, inclusive).

2. Requirements for United States flag operations on Trade Route No. 12 are approximately six (6) sailings per month with freight vessels serving the route exclusively, and supplemental service of approximately nine sailings per month by other United States flag freighter sailings which serve Trade Route No. 12 in part.

3. The Mariner type ships presently operated on the route are suitable for long range service on Trade Route No. 12, and existing C-3 type freight ships are suitable for interim operation. Replacement ships on the route should be comparable to the Mariner type vessel with respect to speed and cargo capacity. Full consideration should be given to providing adequate deep tank and refrigerated capacity as well as suitable space for containerized cargo.

Any person, firm or corporation having any interest in the foregoing who desires to offer comments and views or request a hearing thereon, should submit same in writing in triplicate to the Chief, Office of Government Aid, Maritime Administration, Department of Commerce, Washington 25, D. C., by close of business on November 21, 1958. A request for hearing should be accompanied by a statement of the reasons for such request and any hearing thereby afforded will be before an Examiner on an informal advisory basis only. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: October 29, 1958.

By order of the Maritime Administrator.

[SEAL] JAMES L. PIMPER,
Secretary.

[F. R. Doc. 58-9066; Filed, Oct. 31, 1958; 8:46 a. m.]

Office of the Secretary

[Dept. Order 89, Amended, Amdt. 1]

PATENT OFFICE

ORGANIZATION AND FUNCTIONS

AUGUST 8, 1958.

The material appearing in 21 F. R. 1665-67 of March 15, 1956, is amended as follows:

The purpose of this amendment is to provide in the organization of the Patent Office, a Trademark Trial and Appeal Board authorized by Public Law 85-609, approved August 8, 1958, to abolish the Office of Interferences, to reconstitute the Board of Patent Interferences as a primary organization component of the Patent Office and add to its responsibilities, to establish an Office of Information Services, and to make certain minor changes.

Department Order No. 89 (Amended) of March 2, 1956, is amended as follows:

1. Section 2.03 is changed, in part, to read as follows:

2. Office of the Solicitor.
3. Board of Appeals.
4. Trademark Trial and Appeal Board.
5. Board of Patent Interferences.
9. Office of Administration:

Budget and Finance Division.
Organization and Methods Division.
Personnel Division.
General Services Division.

10. Office of Information Services.

2. Change the numbering of the following section headings as indicated:

SEC. 5. *Office of the Solicitor.*
SEC. 6. *Board of Appeals.*
SEC. 12. *Office of Administration.*
SEC. 14. *Effect on Other Orders.*

3. A new section 7 is added, and reads as follows:

SEC. 7. *Trademark Trial and Appeal Board.* .01 The Trademark Trial and Appeal Board is responsible for hearing and deciding adversary proceedings involving interfering applications, oppositions to registration, cancellation petitions, and concurrent use proceedings, and for hearing and deciding appeals from final refusals of the trademark examiners to allow the registration of trademarks.

.02 The membership of the Trademark Trial and Appeal Board includes the Commissioner, the Assistant Commissioners, and such qualified employees as may be appointed by the Commissioner, at least three of whom shall hear each case.

4. Section 8 is amended to read as follows:

SEC. 8. *Board of Patent Interferences.* .01 The Board of Patent Interferences conducts patent interferences proceedings and makes final determination in the Patent Office as to priority of invention. The Board of Patent Interferences also conducts proceedings, and makes final determinations in the Patent Office, respecting the right of the Atomic Energy Commission and of the Administrator of the National Aeronautics and Space Administration to take title to certain applications and patents.

.02 The Board of Patent Interferences consists of such examiners of patent interferences as may be appointed by the Commissioner, who designates one of them to act as Chairman. Three members constitute a Board of Patent Interferences in determining each question of priority or of title.

5. A new section 13 is added, and reads as follows:

SEC. 13. *Office of Information Services.* The Director of the Office of Information Services serves as adviser to and represents the Commissioner on public information matters, and subject to the policy direction and guidance of the Public Information Officer, conducts information programs fostering public knowledge of and benefit from the American patent system and the functions and services of the Patent Office; formulates and coordinates the administration of information policies in all activities of the Patent Office concerned with rendering information services and assistance to the public; and, provides for the preparation and dissemination of information releases.

6. Subsection 4 of section 12, *Office of Administration* (as renumbered) is amended as follows:

a. Strike the words "and trademark registration certificates" which appear in lines 4 and 5; and

b. Strike the words "and trademark" in the phrase "maintains dockets of inter partes, etc.".

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9071; Filed, Oct. 31, 1958; 8:47 a. m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[643.3]

RAYON STAPLE FIBER FROM FRANCE

FOREIGN MARKET VALUE; PURCHASE PRICE

OCTOBER 28, 1958.

Pursuant to section 201 (b) of the Antidumping Act, 1921, as amended (19 U. S. C. 160 (b)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of rayon staple fiber imported from France is less or likely to be less than the foreign market value, as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U. S. C. 162 and 164).

Customs officers are being instructed to withhold appraisement of entries of rayon staple fiber from France.

[SEAL] RALPH KELLY,
Commissioner of Customs.

[F. R. Doc. 58-9081; Filed, Oct. 31, 1958; 8:50 a. m.]

Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE DIRECTLY FROM HONG KONG

AVAILABLE CERTIFICATIONS BY THE GOVERNMENT OF HONG KONG

Notice is hereby given that certificates of origin issued by the Department of Commerce and Industry of the Government of Hong Kong under procedures agreed upon between that Government and the Foreign Assets Control are available with respect to the importation into the United States directly, or on a through bill of lading, from Hong Kong of the following additional commodities:

Hardwood manufactures and
Joss and novelty (Chinese type) candles.

This notice supersedes previous notices announcing the availability of certificates of origin for hardwood furniture and joss candles. Both of these commodities are now included within the categories set forth above.

[SEAL] EDWIN P. RAINS,
Acting Director,
Foreign Assets Control.

[F. R. Doc. 58-9042; Filed, Oct. 31, 1958; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Area Order 18]

CERTAIN OFFICIALS IN AREA 3

DELEGATION OF AUTHORITY TO ENTER INTO CONTRACTS AND LEASES

OCTOBER 21, 1958.

Pursuant to the authority contained in section One, of Order No. 615 of the Director, of the Bureau of Land Management, and Public Law 85–800, approved August 28, 1958, the following are authorized to enter into contracts for supplies, or services (including rental of equipment) as provided above, when the amount in any contract does not exceed amounts indicated below:

State Supervisors, Area 3:	
Equipment Rental	$2,000
Supplies and materials	2,500
District Managers, Area 3:	
Equipment Rental	2,000
Supplies and materials	2,500

Pursuant to authority stated above, the following are authorized to enter into contracts for construction, supplies (including rental of equipment) or services, irrespective of amount, and leases of space in real estate as provided in sections 50 and 52 of Order No. 2509, and Amendment No. 21, November 9, 1954, of the Secretary of the Interior.

Area Administrative Officer, Area 3.
Area Property and Supply Officer, Area 3.

W. B. WALLACE,
Area Administrator.

[F. R. Doc. 58-9067; Filed, Oct. 31, 1958; 8:46 a. m.]

[Classification 156]

NEVADA

SMALL TRACT OPENING

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (19 F. R. 2473), I hereby classify the following described public lands, totaling 90 acres in Douglas County, Nevada, as suitable for lease and sale for residence purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U. S. C. 682a), as amended:

MOUNT DIABLO MERIDIAN

T. 10 N., R. 22 E.,
Sec. 29, NW¼NW¼, W½W½NE¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, S½NE¼SE¼NW¼, W½SW¼SW¼NE¼.

The area described contains 90 acres subdivided into 20 tracts.

2. Classification of the above-described lands by this order segregates them from all appropriation, including location under the mining laws, except as to applications under the mineral leasing laws.

3. The lands are located near Topaz Lake in Douglas County, Nevada, approximately 20 miles southeast of Gardnerville, Nevada. U. S. Highway 395 south provides excellent accessibility. Elevation approximates 5,500 feet above sea level and the area receives approximately 10 inches of precipitation annually. The growing season is considered to be 114 days between killing frosts. Vegetation consists of big sage, pinon pine, haw bush, cheatgrass and various perennial grasses. The soil is a rocky gravelly loam. Adequate domestic water appears to be available at depths of 70 to 150 feet. Community services are available at Gardnerville. There is no evidence of minerals having been found on the land, however, all mineral rights in the lands will be reserved to the United States.

4. The individual tracts will be 2.5 acres and 5 acres in size; the 5-acre tracts will be rectangular in shape and the 2.5-acre tracts will be square. The appraised value of the 2.5-acre tracts is $200.00 per acre. The appraised value of the 5-acre parcels is $500.00 to $1,000.00 per tract. Rights-of-way 33' within tracts for road purposes and for public utilities will be reserved as shown below. Leases will be for a period of 3 years at a minimum rental of $25.00 per year payable in advance for the entire lease period.

Description of tracts	Acres	Advance rentals (3 years)	Right-of-way, width and location	Appraised value
W½NW¼NW¼NW¼ [1]	5	$75.00	33 feet north and south boundary	$500
E½NW¼NW¼NW¼ [1]	5	75.00	33 feet north, south, and east boundary	500
W½NE¼NW¼NW¼ [1]	5	75.00	33 feet north, south, and west boundary	500
E½NE¼NW¼NW¼ [1]	5	75.00	33 feet north, south, and east boundary	500
W½NW¼NE¼NW¼ [1]	5	75.00	33 feet north, south, and west boundary	500
W½SW¼NW¼NW¼ [1]	5	75.00	33 feet north and south boundary	500
E½SW¼NW¼NW¼ [1]	5	150.00	33 feet east, north, and south boundary	1,000
NW¼SE¼NW¼NW¼	2.5	75.00	33 feet west and north boundary	500
SW¼SE¼NW¼NW¼	2.5	75.00	33 feet west and south boundary	500
E½SE¼NW¼NW¼ [1]	5	150.00	33 feet east, north and south boundary	1,000
W½SW¼NE¼NW¼ [1]	5	150.00	33 feet west, north, and south boundary	1,000
N½NW¼SE¼NW¼ [1]	5	150.00	33 feet west, north, and east boundary	1,000
S½NW¼SE¼NW¼ [1]	5	150.00	33 feet west, south, and east boundary	1,000
N½SW¼SE¼NW¼ [1]	5	150.00	33 feet west, north, and east boundary	1,000
S½SW¼SE¼NW¼ [1]	5	150.00	33 feet west, south, and east boundary	1,000
S½NE¼SE¼NW¼ [1]	5	150.00	33 feet west and south boundary	1,000
NW¼SE¼SE¼NW¼	2.5	75.00	33 feet west and north boundary	500
NE¼SE¼SE¼NW¼	2.5	75.00	33 feet east and north boundary	500
S½SE¼SE¼NW¼ [1]	5	150.00	33 feet east, west, and south boundary	1,000
W½SW¼SE¼NE¼ [1]	5	150.00	33 feet west, north, and south boundary	1,000

[1] Covered by applications from persons entitled to preference under 43 CFR 257.5 (a).

5. Leases will be issued for a term of three years and will contain an option to purchase in accordance with 43 CFR 257.13. Lessees who comply with the general terms and conditions of their leases will be permitted to purchase their tracts at the prices listed above providing that during the period of their leases they either (a) construct the improvements specified in Paragraph 7 or (b) file a copy of an agreement in accordance with 43 CFR 257.13 (d). Leases will be renewable at the discretion of the Bureau of Land Management and the renewal lease will be subject to such terms and conditions as are deemed necessary in the light of the circumstances and the regulations existing at the time of renewal. However, a lease will not be renewable unless failure to construct the required improvements is justified under the circumstances and nonrenewal would work an extreme hardship on the lessee.

6. Persons who have previously acquired a tract under the Small Tract Act are not qualified to secure a tract unless they can make a showing satisfactory to the Bureau of Land Management that the acquisition of another tract is warranted in the circumstances.

7. The improvements referred to in Paragraph 5 above must conform with health, sanitation and construction requirements of applicable ordinances and must, in addition, meet the following standards.

The home must be suitable for year-round habitation, must be neat and attractive in appearance, must be placed on a permanent foundation, and must have a minimum of 500 sq. ft. of floor space. The home must be built in a workmanlike manner out of attractive properly finished materials. Adequate disposal and sanitary facilities must be installed.

8. The lands are now open to filing of drawing-entry cards (Form 4–775) only by persons entitled to veterans' preference. In brief, persons entitled to such preference are (a) honorably discharged veterans who served in the armed forces of the United States for a period of at least 90 days after September 15, 1940, (b) surviving spouse or minor orphan children of such veterans, and (c) with the consent of the veteran, the spouse of living veterans. The 90-day requirement does not apply to veterans who were discharged on account of wounds or disability incurred in the line of duty or the surviving spouse or minor children of veterans killed in the line of duty. Drawing-entry cards (Form 4–775) are available upon request from the Manager, Land Office, 50 Ryland St., Reno, Nevada.

Drawing-entry cards will be accepted if filled out in compliance with the instructions on the form and with the above-named official prior to 10:00 a. m., March 10, 1959. A drawing will be held on that date or shortly thereafter. Any person who submits more than one card will be declared ineligible to participate in the drawing. Tracts will be assigned to entrants in the order that their names are drawn. All entrants will be notified of the results of the drawing. Successful entrants will be sent copies of the lease forms (Form 4–776), with instructions as to their execution and return and as to payment of fees and rentals.

9. All valid applications filed prior to 9:45 a. m., April 9, 1958 will be granted, as soon as possible, the preference right provided for by 43 CFR 257.5 (a).

10. Inquiries concerning these lands shall be addressed to Manager, Land Office, 50 Ryland Street, Reno, Nevada.

E. J. PALMER,
State Supervisor.

OCTOBER 22, 1958.

[F. R. Doc. 58-9068; Filed, Oct. 31, 1958; 8:47 a. m.]

Bureau of Reclamation

[Public Announcement 24, Amdt. 3]

COLUMBIA BASIN PROJECT, WASHINGTON

PUBLIC ANNOUNCEMENT OF THE SALE OF FULL-TIME FARM UNITS

Public announcement of the sale of full-time farm units in the East and Quincy-Columbia Basin Irrigation Districts, Columbia Basin Project, Washington, dated January 10, 1956, and published in the FEDERAL REGISTER at 21 F. R. 592, as amended by Amendment No. 1, dated November 20, 1957, and published in the FEDERAL REGISTER at 22 F. R. 9627, and Amendment No. 2, dated March 28, 1958, and published in the FEDERAL REGISTER at 23 F. R. 2303, is amended as follows:

Farm Unit 191, Irrigation Block 43, which was sold under the provisions of subsection 1.b., is released from the requirement of subsection 16.d. that the purchaser shall reside on the farm unit for a period of not less than 12 months.

FRED G. AANDAHL,
Acting Secretary of the Interior.

OCTOBER 24, 1958.

[F. R. Doc. 58-9108; Filed, Oct. 31, 1958; 8:55 a. m.]

DEPARTMENT OF DEFENSE

Office of the Secretary

ASSISTANT SECRETARY OF DEFENSE (PROPERTIES AND INSTALLATIONS)

DELEGATION OF AUTHORITY TO PERFORM CERTAIN FUNCTIONS

Authorizing and empowering the Assistant Secretary of Defense (Properties and Installations) to perform the functions assigned to the Secretary of Defense under section 513, Public Law 85-685 and page 44 of Report No. 1982 from Senate Committee on Armed Services (July 28, 1958), in connection with the execution of the Fiscal Year 1959 Surplus Commodity and Capehart Housing Program.

Pursuant to the authority vested in the Secretary of Defense by section 202 (f) of the National Security Act of 1947, as amended, the authorities conferred on the Secretary of Defense in subsections (a) and (b) of section 513, Public Law 85-685, are hereby delegated to the Assistant Secretary of Defense (Properties and Installations).

The authority to make the certifications with respect to Capehart housing projects specified on page 44 of Report No. 1982, Senate Committee on Armed Services (July 28, 1958) is also delegated to the Assistant Secretary of Defense (Properties and Installations).

DONALD A. QUARLES,
Deputy Secretary of Defense.

[F. R. Doc. 58-9061; Filed, Oct. 31, 1958; 8:45 a. m.]

SECRETARY OF THE NAVY

DELEGATION OF AUTHORITY WITH RESPECT TO SHIP MORTGAGES

The Deputy Secretary of Defense approved the following on October 27, 1958:

In accordance with the provisions of subsection 202 (f) of the National Security Act, as amended (63 Stat. 581), and section 5 of Reorganization Plan No. 6 of 1953 (67 Stat. 639), I hereby delegate to the Secretary of the Navy full power and authority to act for and in the name of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act, pursuant to section 503 of the Merchant Marine Act of 1936, as amended (66 Stat. 760) providing for ship mortgages.

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

OCTOBER 27, 1958.

[F. R. Doc. 58-9062; Filed, Oct. 31, 1958; 8:45 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-103]

AEROJET-GENERAL NUCLEONICS

NOTICE OF ISSUANCE OF FACILITY LICENSE AMENDMENT

Please take notice that the Atomic Energy Commission has issued the amendment (No. 1) set forth below to License R-50 authorizing certain modifications of the experimental facilities of reactor Model AGN-211 Serial No. 102. The Commission has found that operation of the modified reactor in accordance with the terms and conditions of the license as amended will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since operation of the modified reactor does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after the issuance of the license amendment. For further details, see (1) the application for license amendment submitted by Aerojet-General Nucleonics and (2) a hazards analysis of the proposed operation of the modified reactor prepared by the Division of Licensing and Regulation, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 27th day of October 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

[License No. R-50, Amdt. 1]

Paragraph 1 of License No. R-50, issued to Aerojet-General Nucleonics, San Ramon, California, for the nuclear reactor Model AGN-211, Serial No. 102 is hereby amended to read as follows:

1. This license applies to the nuclear reactor designated by the applicant, Aerojet-General Nucleonics, San Ramon, California, as Model AGN-211, Serial No. 102 (hereinafter referred to as "the reactor") which is owned by the applicant and located at San Ramon, California, and described in the application dated April 7, 1958, and amendments thereto dated May 23, 1958, August 20, 1958, and September 3, 1958 (hereinafter referred to as "the application").

This amendment is effective as of the date of issuance.

Date of issuance: October 27, 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

[F. R. Doc. 58-9059; Filed, Oct. 31, 1958; 8:45 a. m.]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

NOTICE OF ISSUANCE OF UTILIZATION FACILITY CONSTRUCTION PERMIT AMENDMENT

Please take notice that the Atomic Energy Commission has issued the following Amendment (No. 2) to Construction Permit No. CPPR-5 extending until April 30, 1959 the time for the submission by Yankee Atomic Electric Company of data concerning the Company's financial resources.

By letter dated October 3, 1958, Yankee Atomic Electric Company requested an extension of time for the submission of financial information. A copy of the Company's letter may be obtained at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C. or upon request addressed to the Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation.

In accordance with the Commission's rules of practice (10 CFR Part 2), the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from

Yankee Atomic Electric Company or an intervener within thirty days after the issuance of the license amendment.

Dated at Germantown, Md., this 28th day of October 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

[Construction Permit No. CPPR-5, Amdt. 2]

Construction Permit No. CPPR-5 issued to Yankee Atomic Electric Company on November 4, 1957 includes the following provision:

D. Unless, within twelve months from the date of this construction permit, Yankee submits sufficient information relating to its financial resources to enable the Commission to make a finding that the Company has adequate financial resources to meet the requirements of the law and regulations, this permit shall expire; provided that the Commission may for good cause shown extend the time for the submission of such data.

Good cause having been shown for extending the time for submission of such data, and pursuant to the Atomic Energy Act of 1954, as amended, and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", Paragraph D of Construction Permit No. CPPR-5 is hereby amended to read:

D. Unless Yankee Atomic Electric Company submits by April 30, 1959 sufficient information relating to its financial resources to enable the Commission to make a finding that the Company has adequate financial resources to meet the requirements of the law and regulations, this permit shall expire; provided that the Commission may for good cause shown extend the time for the submission of such data.

Date of issuance: October 28, 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Licensing and Regulation.

[F. R. Doc. 58-9060; Filed, Oct. 31, 1958; 8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6849]

MONTANA-DAKOTA UTILITIES CO.

NOTICE OF APPLICATION

OCTOBER 29, 1958.

Take notice that on October 27, 1958, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Montana-Dakota Utilities Co. ("Applicant"), a corporation organized under the laws of the State of Delaware and doing business in the States of Minnesota, Montana, North Dakota, South Dakota, and Wyoming, with its principal business office at Minneapolis, Minnesota, seeking an order authorizing the issuance of $10,000,000 principal amount of First Mortgage Bonds, _____ percent Series, due December 1, 1983. The proposed Bonds are to be secured by Applicant's Indenture of Mortgage dated May 1, 1939, and Indentures supplemental thereto and as to be further supplemented by a Twentieth Supplemental Indenture to be dated as of December 1, 1958. The interest rate per annum of the proposed Bonds is to be fixed by competitive bidding and the Bonds are to be sold by competitive bidding. Applicant proposes to use the proceeds from the sale of the Bonds to retire promissory notes due within one year which were issued in 1958 to provide for a part of the cost of Applicant's 1958 construction program.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 14th day of November 1958, file with the Federal Power Commission, Washington 25, D. C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-9089; Filed, Oct. 31, 1958; 8:52 a. m.]

[Docket No. G-15259]

EL PASO NATURAL GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 28, 1958.

Take notice that on June 10, 1958, as supplemented on August 14, 1958, El Paso Natural Gas Company (Applicant) filed an application in Docket No. G-15259 for authority to acquire from Pioneer Natural Gas Company (Pioneer) and operate certain natural gas facilities in the State of Texas and to abandon certain other facilities to be transferred to Pioneer in exchange for the facilities to be acquired, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The facilities which Applicant proposes to abandon and transfer to Pioneer consist of Applicant's 64.6-mile 8-inch Umbarger-Farwell pipeline and its 44.7-mile 4- to 8-inch Amherst-Farwell pipeline, together with appurtenant facilities, both lines extending from separate connections with Applicant's 24-inch Plains-Dumas pipeline in Lamb and Randall Counties, Texas, to the vicinity of Farwell, Parmer County, Texas.

The facilities which Applicant proposes to acquire in exchange from Pioneer consist of Pioneer's 81inch Line No. 196, consisting of 26.15 miles of existing 8-inch pipeline and 19.0 miles of new interconnecting 8-inch line to be constructed by Pioneer upon approval of the proposed exchange, together with appurtenant facilities. Line No. 196 will then extend from a connection with Applicant's 24-inch Plains-Dumas line at its Dimmitt Compressor Station in Lamb County, Texas, west to a connection at Farwell with the aforementioned Umbarger-Farwell and Amherst-Farwell lines.

Applicant presently transports gas through its Umbarger-Farwell and Amherst-Farwell lines for sale and delivery at Farwell to an existing customer, Southern Union Gas Company (Southern Union) for resale in Farwell and Clovis, New Mexico, and delivers gas to Pioneer at various points along these lines for distribution and resale in Texas.

Pioneer presently receives gas from Applicant's Plains-Dumas line at Dimmitt Station and delivers said gas to various customers located along the existing portion of Line No. 196 in Texas.

Applicant states that the proposed exchange of facilities would have the effect of permitting the Umbarger-Farwell and Amherst-Farwell lines to be used by Pioneer exclusively for its customers and Applicant would serve Southern Union from Line No. 196, with some minor sales to Pioneer being made at various points along the line.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 2, 1958, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 21, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-9090; Filed, Oct. 31, 1958; 8:52 a. m.]

[Docket No. G-16158]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 28, 1958.

Take notice that on August 27, 1958, United Gas Pipe Line Company (Applicant) filed an application in Docket No. G-16158, pursuant to section 7 (c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of a one-inch tap and meter station on Applicant's Taylorsville two-inch branch line in Jones County, Mississippi, near the junction of Applicant's 12-inch line

from the Soso Field to the Jackson-Mobile main line, for the purpose of rendering direct interruptible natural gas service to Interstate Oil Pipe Line Company (Interstate) for use as fuel in Interstate's pump station near Taylorsville, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The estimated annual requirements under this application are 12,000 Mcf for each of the years 1959, 1960, and 1961, with a peak day demand estimated to be 75 Mcf. The estimated cost of the proposed facilities is $840, to be financed from current working funds.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 2, 1958, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 21, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

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

[F. R. Doc. 58-9091; Filed, Oct. 31, 1958; 8:52 a. m.]

[Docket No. G-16302]

MICHIGAN GAS STORAGE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 28, 1958.

Take notice that on September 12, 1958, Michigan Gas Storage Company (Applicant) filed an application in Docket No. G-16302, pursuant to section 7 (b) of the Natural Gas Act, for authority to abandon certain natural gas facilities in Riverside Storage Field, Riverside Township, Missaukee County, Michigan, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The subject facilities are:

(1) A 150 horsepower compressor unit; and

(2) A desulphurization plant of the amine type having a capacity of 15,000 Mcf per day at 300 psig.

Applicant states that the compressor unit, acquired when Applicant acquired Riverside Storage Field in 1952, has not been used since Applicant repressured that field and is no longer needed in Applicant's operations. The desulphurization plant acquired at the same time was rendered unnecessary after several injection and withdrawal cycles, when the hydrogen sulphide content of the gas taken from the Riverside Field declined to a point where said desulphurization plant was no longer needed.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 2, 1958, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 21, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

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

[F. R. Doc. 58-9092; Filed, Oct. 31, 1958; 8:52 a. m.]

[Docket No. G-16688]

OHIO OIL COMPANY

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 28, 1958.

The Ohio Oil Company (Ohio Oil) on September 29, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Supplementary Agreement, dated August 22, 1958. Notice of Change, dated September 23, 1958.

Purchaser: Kansas-Nebraska Natural Gas Company, Inc.

Rate schedule designation: Supplement Nos. 7 and 8 to Ohio Oil's FPC Gas Rate Schedule No. 19.

Effective date: October 30, 1958 (stated effective date is the first day after the expiration of the required 30-days' notice).

In support of the proposed one cent per Mcf redetermined price increase to a rate level of 15.0 cents, Ohio Oil states that the contract provides for such redeterminations at 5-year intervals, that the increase is fair and equitable and no more than is required to encourage exploration and development and that the increase would have little or no effect on the price to the ultimate consumer.

The increased rate and charge so proposed has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement Nos. 7 and 8 to Ohio Oil's FPC Gas Rate Schedule No. 19 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement Nos. 7 and 8 to Ohio Oil's FPC Gas Rate Schedule No. 19.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 30, 1959, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

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

By the Commission (Commissioner Hussey dissenting).

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

[F. R. Doc. 58-9093; Filed, Oct. 31, 1958; 8:52 a. m.]

[Docket No. G-16689]

HAYNES B. OWNBY DRILLING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 28, 1958.

Haynes B. Ownby Drilling Company (Ownby) on September 29, 1958 tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 26, 1958.
Purchaser: Tennessee Gas Transmission Company.
Rate schedule designation: Supplement No. 9 to Ownby's Gas Rate Schedule No. 3.
Effective date: January 1, 1959 (stated effective date is that proposed by Ownby).

In support of the 4.30 cents per Mcf redetermined price increase to a rate level of 15.33 cents, Ownby, who also submitted a letter from Tennessee Gas Transmission Company agreeing to the proposed price, states that the increase should be granted to equalize Ownby's rate with that of others currently being paid in the area.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 9 to Ownby's FPC Gas Rate Schedule No. 3 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 9 to Ownby's FPC Gas Rate Schedule No. 3.

(B) Pending such hearing and decision thereon, said supplement be and is hereby suspended and the use thereof deferred until June 1, 1959, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

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

By the Commission.

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

[F. R. Doc. 58-9094; Filed, Oct. 31, 1958; 8:53 a. m.]

[Docket No. G-16690]

HUDSON OIL & METALS CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 28, 1958.

Hudson Oil & Metals Company (Hudson) on September 29, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jursdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 24, 1958.
Purchaser: El Paso Natural Gas Company.
Rate schedule designation: Supplement No. 4 to Hudson's FPC Gas Rate Schedule No. 2.
Effective date: October 30, 1958 (stated effective date is the first day after expiration of the required 30-days' notice).

In support of the one cent per Mcf favored-nation increase to a rate level of 11 cents, Hudson, who submitted a letter from El Paso, which advises Hudson of the increased price in Permian Basin area, states that the contractual price provisions were negotiated at arms' length and that the proposed rate is identical to that currently being paid in the area.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 4 to Hudson's FPC Gas Rate Schedule No. 2 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 4 to Hudson's FPC Gas Rate Schedule No. 2.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until March 30, 1959, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

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

By the Commission (Commissioner Hussey dissenting).

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

[F. R. Doc. 58-9095; Filed, Oct. 31, 1958; 8:53 a. m.]

[Docket No. G-16691]

MAGNOLIA PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

OCTOBER 28, 1958.

Magnolia Petroleum Company (Magnolia) on September 30, 1958, tendered for filing proposed changes in its presently effective rate schedules[1] for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, undated.
Purchaser: United Fuel Gas Company.
Rate schedule designation: Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 1. Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 2.
Effective date: November 1, 1958 (stated effective date is that proposed by Magnolia).

In support of the two 4-mill periodic price increases to a rate level of 19.1 cents per Mcf, Magnolia states that the contracts were entered into after arms-length negotiations, the gas is sold thereunder on the installment basis, the producers are selling a commodity rather than a service, the price received is determined by the law of supply and demand, the proposed price does not exceed that received by other producers in the area, the cost of doing business is steadily increasing and the increased rate is necessary to encourage exploration and development.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 7 to Magnolia's

[1] Subject to further orders of the Commission in Docket Nos. G-12193, G-13437 and G-15723.

FPC Gas Rate Schedule No. 1, and Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 2 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 7 to Magnolia's FPC Gas Rate Schedule No. 1, and Supplement No. 6 to Magnolia's FPC Gas Rate Schedule No. 2.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until April 1, 1959, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

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

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

By the Commission (Commissioner Hussey dissenting).

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

[F. R. Doc. 58-9096; Filed, Oct. 31, 1958; 8:53 a. m.]

[Docket No. G-16274]

PACIFIC NORTHWEST PIPELINE CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 29, 1958.

Take notice that Pacific Northwest Pipeline Corporation (Applicant), a Delaware corporation with its principal place of business in Salt Lake City, Utah, filed an application on September 10, 1958, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application, which is on file with the Commission and open to public inspection.

Applicant seeks authority to construct and operate a measuring and regulating station with appurtenant equipment at the intersection of its existing 6-inch Coeur d'Alene-Kellogg lateral line and the facilities of Washington Water Power Company (Washington) in Kootenai County, Idaho, for the sale and delivery of natural gas to Washington for resale and distribution in the community of Post Falls, Idaho.

The application states that Washington has received the necessary franchise authorization to sell natural gas in the Post Falls, Idaho, area from the Idaho Public Utilities Commission, as well as an ordinance passed by the Village of Post Falls.

Applicant estimates the natural gas requirements of Post Falls are as follows:

VOLUMES IN MCF AT 14.73 PSIA

Year	Peak day	Annual
1st	705	124,882
2d	795	130,240
3d	888	136,408

Applicant estimates the total cost of the facilities represented herein at $9,599, which will be financed from funds currently available.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 9, 1958 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 24, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

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

[F. R. Doc. 58-9097; Filed, Oct. 31, 1958; 8:53 a. m.]

[Project No. 2059]

CITY OF EUGENE, OREGON

NOTICE OF APPLICATION FOR SURRENDER OF LICENSE

OCTOBER 29, 1958.

Public notice is hereby given that City of Eugene, Oregon, has filed application under the Federal Power Act (16 U. S. C. 791a–825r) for surrender of the license for proposed water-power Project No. 2059, which authorized construction on the McKenzie River in Lane and Linn Counties, Oregon, of a project (Beaver Marsh) which would have consisted of an earth-fill dam about 34 feet high across a portion of Fish Lake creating a reservoir containing 1,300 acre-feet of usable storage capacity; a low diversion dam at the outlet of Clear Lake for maintaining the surface elevation of the lake; a conduit comprising a tunnel about 8,400 feet long with intake on Clear Lake; a surge tank, a penstock about 610 feet long; Beaver Marsh powerhouse containing two 23,500-horsepower turbines each connected to a 15,000-kva generator; a substation at Beaver Marsh powerhouse; a low earth-fill dike about 3,600 feet long with a rock-fill crib spillway creating a reregulating reservoir below Beaver Marsh plant, with normal pondage of about 220 acre-feet; a 115-kv transmission line from Beaver Marsh substation to Leaburg switchyard, a distance of 46 miles; and appurtenant facilities.

Applicant states that surrender of the license for the proposed Beaver Marsh Project is requested for the reason and upon the condition that a license be granted for the proposed Carmen-Smith Project No. 2242—to be located on the McKenzie River, and its tributary Smith River, in Lane and Linn Counties, Oregon—the construction of which applicant states will be more beneficial to the community than the construction of the Beaver Marsh Project, and that the surrender become effective upon the effective date of the license for construction of Project No. 2242.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last date upon which protests or petitions may be filed is December 1, 1958. The application is on file with the Commission for inspection.

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

[F. R. Doc. 59-9098; Filed, Oct. 31, 1958; 8:53 a. m.]

[Docket No. G-16694]

M. ASCHER ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 29, 1958.

M. Ascher et al. (Ascher) on September 29, 1958, tendered for filing a proposed change in his presently effective rate schedule[1] for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 26, 1958.

Purchaser: Hassie Hunt Trust.

Rate schedule designation: Supplement No. 5 to Ascher's FPC Gas Rate Schedule No. 4.

[1] Supplement No. 4 to Ascher's FPC Gas Rate Schedule No. 4 currently in effect subject to refund.

Effective date: October 30, 1958 (stated effective date is the first day after the expiration of the required 30-days' notice).

Ascher proposes an increase in price of 2.051 mills per Mcf which reflects a contractually provided periodic increase plus the Louisiana tax [2] increment which is in effect subject to refund in Docket No. G-16040.

The Commission is advised that litigation is being instituted to challenge the constitutionality of the said tax imposed by Act No. 8 of 1958. In consideration of this fact, and in order to assure appropriate refund in the event said Act No. 8 of 1958 should be declared unconstitutional or otherwise held invalid by final judicial decision, it is deemed advisable to suspend the said proposed increased rate and charge. This suspension, however, is based on the possibility of the additional tax being invalidated and only such tax increment of the proposed increased rate shall be subject to refund.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 5 to Ascher's FPC Gas Rate Schedule No. 4 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 5 to Ascher's FPC Gas Rate Schedule No. 4.

(B) Pending such hearing and decision thereon, said supplement be and it hereby is suspended and the use thereof deferred until October 31, 1958, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

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

By the Commission.

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

[F. R. Doc. 58-9099; Filed, Oct. 31, 1958; 8:53 a. m.]

[2] The additional "excise, license, or privilege tax" levied by the State of Louisiana pursuant to Act No. 8 of 1958 (House Bill 303), as approved on June 16, 1958, amending Title 47 of the Louisiana Revised Statutes of 1950.

[Docket No. G-16696]

GULF OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

OCTOBER 29, 1958.

Gulf Oil Corporation (Gulf Oil) on September 30, 1958, tendered for filing a proposed change in its presently effective rate schedule [1] for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated September 29, 1958.

Purchaser: Tennessee Gas Transmission Company.

Rate schedule designation: Supplement No. 7 to Gulf Oil's FPC Gas Rate Schedule No. 80.

Effective date: November 1, 1958 (stated effective date is that proposed by Gulf Oil).

In support of the proposed redetermined rate increase, Gulf Oil states that the increase is based upon the redetermination clause in the basic contract and cites a letter from the Tennessee Gas Transmission Company wherein the company agrees to pay the increased rate. Gulf Oil also states that the price provisions of the contract were negotiated at arm's-length, that the increase is necessary to offset the increased costs of doing business and to encourage exploration and development, and that the proposed rate increase is just and reasonable.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 7 to Gulf Oil's FPC Gas Rate Schedule No. 80 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 7 to Gulf Oil's FPC Gas Rate Schedule No. 80.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until April 1, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

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

By the Commission.

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

[F. R. Doc. 58-9100; Filed, Oct. 31, 1958; 8:54 a. m.]

[1] Present effective rate is subject to refund in Docket No. G-15831.

SECURITIES AND EXCHANGE COMMISSION

[24A-1158]

DOGS OF THE WORLD, INC.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

OCTOBER 28, 1958.

I. Dogs of the World, Inc., Owings Mills, Maryland, with its principal business operations proposed to be conducted in North Miami Beach, Florida, filed with the Commission on November 22, 1957, a notification on Form 1-A and an offering circular, and subsequently filed amendments thereto relating to an offering of 1,000 shares of Class A common stock and 4,000 shares of Class B common stock, each with a par value of $50, to be offered in units of one share of Class A and four shares of Class B at $250 a unit, aggregating $250,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in that the issuer has failed to file reports on Form 2-A as required by Rule 260 and has failed to file a revised offering circular as required by Rule 256 (e) of Regulation A despite requests of the Commission's staff for such filings.

III. *It is ordered*, Pursuant to Rule 261 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within thirty days herefrom; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission. If no hearing is requested

and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-9088; Filed, Oct. 31, 1958; 8:52 a. m.]

[File No. 24FW-1149]

UNITED STANDARD CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR AND NOTICE OF OPPORTUNITY FOR HEARING

OCTOBER 28, 1958.

I. United Standard Corporation ("Issuer"), a Delaware corporation with its principal offices located at Brenham, Texas, filed with the Commission on October 6, 1958, a notification on Form 1-A and an offering circular relating to an offering of 300,000 shares of its $1.00 par value per share common stock at the price of $1.00 per share or a total of $300,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) and Regulation A thereunder.

II. The Commission has reason to believe that:

A. The terms and conditions of Regulation A have not been complied with in that:

1. The full names and complete residence addresses of each officer have not been furnished in response to Item 3 of Form 1-A.

2. Pertinent excerpts from governing instruments defining the rights of holders of the shares of common stock proposed to be offered are not referred to and attached as exhibits, as required by Item 11 (a) of Form 1-A.

B. The offering circular and other material contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose the manner in which the proposed offering of securities will be made and the person or persons to whom will be paid underwriting discounts and commissions of 20 per cent, or a total of $60,000, in the event all of the shares offered are sold, as required by Item 5 of Schedule I.

2. The failure to disclose the manner in which the Issuer acquired its interests in properties in Caldwell County, Texas, including the date of acquisition, from whom such properties were acquired and the consideration paid therefor by the Issuer.

3. The failure to disclose a reasonably itemized statement of the purposes for which the net cash proceeds to the Issuer from the sale of the securities are to be used and the amount to be used for each such purpose, indicating in what order of priority the proceeds will be used for the respective purposes, as required by Item 6 (a) of Schedule I.

4. The failure to disclose whether or not there are any arrangements for the return of funds to subscribers, in the event all of the securities to be offered are not sold, as required by Item 6 (b) of Schedule I.

5. The failure to include appropriate financial statements of the Issuer as of the specified date and covering the specified periods of time required under Item 11 (a) or Item 11 (b) of Schedule I.

6. The failure to include information disclosing the exact participation of the Issuer in the properties shown to be owned by the Issuer, as required by Item 8B (a).

7. The failure to disclose information as to the production history of the properties shown to be owned by the Issuer, as required by Item 8B (c) of Schedule I.

8. The statement on page 3 of the offering circular concerning an oil reservoir having a gross potential value well in excess of one million dollars.

9. The tabular information on page 4 with respect to "total oil expected to be recovered" and "gross value of oil at current prices" for seven wells proposed to be drilled upon properties represented as owned by the Issuer.

10. The failure to include a map showing location, depth, year drilled and present status of all wells drilled for oil on or near properties represented as owned by the Issuer.

11. The failure to disclose whether or not any directors, officers, controlling persons or promoters of the Issuer have any direct or indirect interests, by security holdings or otherwise, in the Issuer or its operations and properties, or in any material transactions between such persons and the Issuer or any of its predecessors or affiliates, as required by Item 9 (c) of Schedule I.

12. The failure to disclose the percentage of outstanding securities of the Issuer which will be held by directors, officers and promoters, as a group, and the percentage of such securities which will be held by the public, if all of the securities proposed to be offered under this regulation are sold, and the respective amounts of cash (including cash expended for property transferred to the Issuer) paid therefor by such group and by the public, as required by Item 9 (d) of Schedule I.

C. The offering would be made in violation of Section 17 of the Securities Act of 1933, as amended.

III. *It is ordered*, Pursuant to Rule 261 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing, within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for such hearing will be promptly given by the Commission.

By the Commission.

ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-9087; Filed, Oct. 31, 1958; 8:51 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U. S. C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 485 (23 F. R. 200) and Administrative Order No. 507 (23 F. R. 2720), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Biflex Bishopville, Inc., Bishopville, S. C.; effective 11-1-58 to 10-31-59 (brassieres, girdles).

Carbondale Children's Dress Co., 30 Seventh Avenue, Carbondale, Pa.; effective 10-26-58 to 10-25-59 (children's and girls' dresses and play suits).

The Carthage Corp., Carthage, Miss.; effective 11-1-58 to 10-31-59; workers engaged in the manufacture of men's work pants (men's work pants).

The Carthage Corp., Carthage, Miss.; effective 11-1-58 to 10-31-59; workers engaged in the manufacture of ladies' slacks (ladies' slacks).

Crystal Springs Shirt Corp., Crystal Springs, Miss.; effective 10-21-58 to 10-20-59 (boys' shirts).

Decherd Franklin Co., Inc., Decherd, Tenn.; effective 10-15-58 to 10-14-59 (men's single pants).

Eureka Pants Manufacturing Co., Madison Street, Shelbyville, Tenn.; effective 10-27-58 to 10-26-59 (work pants and shirts).

Fly Manufacturing Co., 204 South Main Street, Shelbyville, Tenn.; effective 10-27-58 to 10-26-59 (work pants, overalls, dungarees, jackets).

Freeland Manufacturing Co., 156 Ridge Street, Freeland, Pa.; effective 11-1-58 to 10-31-59 (men's and boys' sport jackets; men's work clothes, work uniforms).

Glenn Manufacturing Co., Inc., Amory, Miss.; effective 10-15-58 to 10-14-59 (men's dress pants).

H & H Manufacturing Co., Statham, Ga.; effective 11-1-58 to 10-31-59 (men's slacks).

Harrisburg Children's Dress Co., 1380 Howard Street, Harrisburg, Pa.; effective 10-26-58 to 10-25-59 (children's and girls' dresses and play suits).

Heavy Duty Manufacturing Co., Gainesboro, Tenn.; effective 10-26-58 to 10-25-59 (men's and boys' sport shirts).

International Latex Corp., Newman, Ga.; effective 11-1-58 to 10-31-59 (brassieres).

Orangeburg Manufacturing Co., Inc., 345 Pine Street, Orangeburg, S. C.; effective 10-14-58 to 10-13-59 (cotton wash dresses and housecoats).

Penn Children's Dress Co., 831 Lackawanna Avenue, Mayfield, Pa.; effective 10-26-58 to 10-25-59 (children's and girls' dresses).

Phillips-Van Heusen Corp., Minersville, Pa.; effective 10-20-58 to 10-19-59 (sport shirts).

Reliance Manufacturing Co., Factory No. 40, Water Valley, Miss.; effective 10-15-58 to 10-14-59 (men's and boys' work pants; Navy jumpers).

Rob Roy Co., Inc., Cambridge, Md.; effective 11-1-58 to 10-31-59 (Boys' shirts).

Rugby Knitting Mills, Inc., 1490 Jefferson Avenue, Buffalo, N. Y.; effective 11-1-58 to 10-31-59 (men's and boys' jackets).

Shelburne Shirt Co., Inc., 69 Alden Street, Fall River, Mass.; effective 11-1-58 to 10-31-59 (men's dress shirts).

Shreveport Garment Manufacturers, 410-420 Commerce Street, Shreveport, La.; effective 10-23-58 to 10-22-59 (men's and boys' cotton dungarees; men's cotton work pants).

Tom & Huck Togs, Inc., Amory, Miss.; effective 10-15-58 to 10-14-59 (men's and boys' play slacks).

Washington Overall Manufacturing Co., Inc., Scottsville, Ky.; effective 10-26-58 to 10-25-59 (men's and boys' trousers).

Weldon Manufacturing Co. of Pa., 1307 Park Avenue, Williamsport, Pa.; effective 10-18-58 to 10-17-59 (pajamas).

The following certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Athens Garment Co., Athens, Ala.; effective 10-24-58 to 10-23-59; 10 learners (work shirts).

Blue Bell, Inc., Coalgate, Okla.; effective 10-16-58 to 10-15-59; 10 learners (men's and boys' work pants).

Devil Dog Manufacturing Co., Middlesex, N. C.; effective 11-4-58 to 11-3-59; 10 learners (ladies' and children's sportswear).

Eugenia Sportswear Co., 873 Peace Street, Hazleton, Pa.; effective 10-13-58 to 10-12-59; five learners (children's snow suits, ski pants, carcoats, etc.).

Henson, Inc., Monroe, Ga.; effective 10-17-58 to 10-16-59; 10 learners (semi-dress slacks).

The following certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Walter E. Allen Co., 812 East Broadway, Okemah, Okla.; effective 10-16-58 to 4-15-59; 75 learners (trousers, jackets).

Blue Bell, Inc., Coalgate, Okla.; effective 10-16-58 to 4-15-59; 30 learners (men's and boys' work pants).

Caledonia Manufacturing Co., Caledonia, Miss.; effective 10-17-58 to 4-16-59; 25 learners (men's dress and play slacks).

Glenn Slacks, Inc., Bruce, Miss.; effective 10-17-58 to 4-16-59; 50 learners (men's play slacks and walking shorts; boys' dress pants, etc.).

Mize Manufacturing Co., Inc., Mize, Miss.; effective 10-15-58 to 4-14-59; 30 learners (women's raincoats).

Page Manufacturing Co., Inc., 508 West Main Street, Lexington, Ky.; effective 10-16-58 to 4-15-59; 20 learners (ladies' cotton dresses).

Wes-Bloc Manufacturing Co., Inc., West Blocton, Ala.; effective 10-15-58 to 4-14-59; 35 learners (men's and boys' pants).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.65, as amended).

Good Luck Glove Co., Carbondale, Ill.; effective 10-15-58 to 10-14-59; 10 percent of the total number of machine stitchers for normal labor turnover purposes (cotton, jersey and leather combination).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.43, as amended).

Charles H. Bacon Co., Loudon, Tenn.; effective 10-17-58 to 10-16-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned, seamless).

Bear Brand Hosiery Co., Paxton, Ill.; effective 10-31-58 to 10-30-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned).

Ridgeview Hosiery Mill Co., Newton, N. C.; effective 10-24-58 to 10-23-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned, seamless).

Wyatt Knitting Co., 1006 Goldsboro Avenue, Sanford, N. C.; effective 10-15-58 to 10-14-59; five learners for normal labor turnover purposes (full-fashioned, seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Gurney Manufacturing Div., Botany Cottons, Inc., Prattville, Ala.; effective 10-21-58 to 10-20-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (knitted fabric).

Ilona Mills, Inc., Manufacturers Road, Chattanooga, Tenn.; effective 10-31-58 to 10-30-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (womens' and children's underwear).

Kain-Murphey Corp., Manufacturers Road, Chattanooga, Tenn.; effective 10-31-58 to 10-30-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (children's sleeping garments).

Milaca Underwear Co., Inc., Milaca, Minn.; effective 10-16-58 to 10-15-59; five learners for normal labor turnover purposes (ladies' nightgowns, pajamas, pants, slips).

Signal Knitting Mills, Manufacturers Road, Chattanooga, Tenn.; effective 10-31-58 to 10-30-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's, women's and children's underwear).

States Textile Corp., 15 North Main Street, Carbondale, Pa.; effective 10-15-58 to 10-14-59; 5 learners for normal labor turnover purposes (men's cotton knit undershirts).

Van Raalte Co., Inc., High Rock Avenue, and Circular Street, Saratoga Springs, N. Y.; effective 10-16-58 to 10-15-59; 5 percent of the total number of factory production workers for normal labor turnover purposes (knitted undergarments—ladies' nylon panties, petticoats, slips, gowns, pajamas, etc.).

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Westminister Shoe Co., East Green Street, Westminster, Md.; effective 10-15-58 to 10-14-59; 10 percent of the total number of factory production workers for normal labor turnover purposes (women's dress and work shoes).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

Harrisburg Manufacturing Co., 43 South Main Street, Harrisburg, Ill.; effective 10-20-58 to 4-19-59; 10 learners for plant expansion purposes, in the occupation of sewing machine operator for a learning period of 240 hours at the rate of 90 cents and hour (caps).

Palm Beach Co., Bourne Avenue, Somerset, Ky.; effective 10-19-58 to 4-18-59; 5 percent of the total number of factory production workers for normal labor turnover purposes in the occupations of, sewing machine operator, hand sewer, final presser, finishing operations involving hand sewing, each for a learning period of 480 hours at the rates of at least 90 cents an hour for the first 280 hours and not less than 95 cents an hour for the remaining 200 hours (men's "Palm Beach" coats).

The following certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Barca Knit Corp., Rio Piedras, P. R.; effective 9-14-58 to 1-21-59; 15 learners for plant expansion purposes in the occupations of: (1) power and hand knitting machine operators for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 84 cents an hour for the remaining 240 hours; (2) hand and machine sewing finishing for a learning period of 320 hours at the rates of 72 cents an hour for the first 160 hours and 84 cents an hour for the remaining 160 hours (replacement certificate) (knitted outerwear—sweaters).

Beatrice Needle Craft, Inc., Mayaguez, P. R.; effective 10-1-58 to 3-31-59; 25 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 320 hours and 70 cents an hour for the remaining 160 hours (brassieres).

Marita Mills, Inc., Toa Baja, P. R.; effective 9-14-58 to 3-12-59; 10 learners for normal labor turnover purposes in the occupations of: (1) knitting, topping, and looping, each for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 84 cents an hour for the remaining 240 hours; (2) machine stitching, hand sewing, and pressing, each for a learning period of

320 hours at the rates of 72 cents an hour for the first 160 hours and 84 cents an hour for the remaining 160 hours; (3) winding, for a learning period of 240 hours at the rate of 72 cents an hour (replacement certificate) (sweaters).

Northridge Knitting Mills, Inc., San German, P. R.; effective 9-14-58 to 3-25-59; 11 learners for normal labor turnover purposes in the occupations of: (1) knitting, topping, and looping, each for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 84 cents an hour for the remaining 240 hours; (2) machine stitching (seaming and cardigan sewing), finishing (pressing) each for a learning period of 320 hours at the rates of 72 cents an hour for the first 160 hours and 84 cents an hour for the remaining 160 hours (replacement certificate) (ladies' full-fashioned sweaters).

Sanrico Sportswear Corp., Hato Rey, P. R.; effective 9-14-58 to 9-23-58; 15 learners for plant expansion purposes in the occupations of, sewing machine operators, and final pressers, each for a learning period of 480 hours at the rates of 58 cents an hour for the first 240 hours and 68 cents an hour for the remaining 240 hours (replacement certificate) (women's skirts, slacks and shorts).

Trio Knitting Corp., Coamo, P. R.; effective 9-14-58 to 11-25-58; 10 learners for plant expansion purposes in the occupation of, hand knitting machine operators, for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 84 cents an hour for the remaining 240 hours (replacement certificate) (sweaters).

Tropical Corp., Mayaguez, P. R.; effective 9-12-58 to 2-10-59; 25 learners for plant expansion purposes in the occupations of: (1) sewing machine operators; bow making, collar setting, sleeve setting, body work, and snap machines, each for a learning period of 480 hours at the rates of 49 cents an hour for the first 240 hours and 57 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments, for a learning period of 160 hours at the rate of 49 cents an hour (replacement certificate) (dolls' dresses).

Uniforms, Inc., Cayey, P. R.; effective 9-14-58 to 7-30-59; 10 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 58 cents an hour for the first 240 hours and 68 cents an hour for the remaining 240 hours (replacement certificate) (nurses' and maids' uniforms).

West Manufacturing Corp., Mayaguez, P. R.; effective 9-14-58 to 11-24-58; 24 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 58 cents an hour for the first 240 hours and 68 cents an hour for the remaining 240 hours; (2) final inspectors, for a learning period of 160 hours at the rate of 58 cents an hour (replacement certificate) (automobile seat covers).

Each learner certificate has been issued upon the representation of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D. C., this 23d day of October 1958.

MILTON BROOKE,
Authorized Representative of the Administrator.

[F. R. Doc. 58-9029; Filed, Oct. 30, 1958; 8:46 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 29, 1958.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35056: *Substituted service, rail for motor, N. Y., N. H. & Penna. R. Rs.* Filed by The Eastern Central Motor Carriers Assn., Inc. (No. 96), for interested rail and motor carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars between Toledo, Ohio, on the one hand, and Boston, Mass., Providence, R. I., or Worcester, Mass., on the other.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Assn., Inc., tariff MF-I. C. C. A-148.

FSA No. 35057: *Substituted service, rail for motor, N. Y., N. H. & H. and Penna. R. Rs.* Filed by The Eastern Central Motor Carriers Assn., Inc. (No. 97), for interested rail and motor carriers. Rates on various commodities loaded in or on highway trailers and transported on railroad flat cars between Cincinnati, Ohio, on the one hand, and Boston, Springfield, Worcester, Mass., Hartford, New Haven, Conn., or Providence, R. I., on the other.

Grounds for relief: Motor truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Assn., Inc., tariff MF-I. C. C. A-148.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F. R. Doc. 58-9070; Filed, Oct. 31, 1958; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

HANS GUNTHER COREL AND SIEGFRIED HEINZ COHN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Hans Gunther Corel, Johannesburg, Union of South Africa; Claim No. 58552; $1,000.00 in the Treasury of the United States; one-half thereof to each claimant.

Siegfried Heinz Cohn, Berlin Germany; Claim No. 58553. Vesting Order No. 2799.

Executed at Washington, D. C., on October 28, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General, Director, Office of Alien Property.

[F. R. Doc. 58-9075; Filed, Oct. 31, 1958; 8:49 a. m.]

[Vesting Order SA-262]

CHRISTO PETCHEFF S. A.

In re: Debt owing to Christo Petcheff S. A.; F-11-200.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F. R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F. R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows: That certain debt or other obligation of The First National City Bank of New York, 55 Wall Street, New York, New York, arising out of an account entitled, "Socony Vacuum Oil, Inc., Account Christo Petcheff S. A.," maintained at its branch office located at 26 Broadway, New York, New York, together with any and all rights to demand, enforce and collect the same,

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947 was owned directly or indirectly by Christo Petcheff S. A., Sofia, Bulgaria, a national of Bulgaria as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or

for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D. C., on October 28, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-9076; Filed, Oct. 31, 1958; 8:49 a. m.]